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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**

## **EXPLANATORY MEMORANDUM**

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

The Council and the Commission agreed on a joint declaration attached to the Council minutes of 26 May 2014 when the own resources legislative package, consisting of Decision 335/2014 on the system of Union's own resources (the Own Resources Decision), Regulation No 608/2014 laying down implementing measures and Regulation 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, was adopted.

The Own Resources Decision is the key legal instrument laying down the main elements of the system, such as the list of own resources and the ceilings for commitment and payment appropriations (hence the size of the Union's budget). The implementing measures for the own resources system stem from two Articles of the Treaty on the Functioning of the European Union (TFEU):

- The newly introduced Regulation No 608/2014 laying down implementing measures is based on Article 311(4) TFEU (introduced by the Lisbon Treaty) and currently contains rules on calculation and budgeting of the annual balance, and on control and supervision measures.
- Regulation No 609/2014, which is a recast of Regulation 1150/2000, is based on Article 322(2) TFEU and deals with the rules on making own resources available and the measures to meet cash requirements. It contains practical arrangements in respect of the establishment of traditional own resources, conservation of supporting documents, administrative cooperation, the applicable rate for the GNI-based own resource, accounts to be kept for own resources, the timing for making them available and for making adjustments and provisions concerning cash management and irrecoverable amounts.

Both Regulations will enter into force on the same day as Decision 335/2014 after this Decision has been approved by all Member States in accordance with their respective constitutional requirements. The package will apply retroactively from 1 January 2014.

In the above-mentioned joint declaration of 26 May 2014, the Commission committed to submit a proposal for Article 12 of Regulation 609/2014 in order to allow a revision of the procedure for calculating the interest on amounts made available belatedly. The declaration further indicates that the rate(s) of interest shall respect the principle of proportionality while ensuring a smooth functioning of the system to meet the cash requirements.

Apart from the interest rules this proposal based on Article 322(2) TFEU is addressing also the procedure for the annual adjustment of the VAT and GNI-based own resources as the most recent amendment introduced in the context of the unprecedented size of the adjustments in 2014 will no longer apply after the entry into force of Regulation No 609/2014.

In addition, some other clarifications and improvements to the current arrangements, mainly of technical nature, are proposed. They reflect the most recent experience and lessons learnt as regards the accounts for own resources, the management of Commission's treasury resources in the first semester, the assessment of GNI data by the Commission (Eurostat), the impact of criminal investigations on the establishment and making available of traditional own resources and the reporting of irrecoverable amounts of traditional own resources.

The motivation for the amendments proposed by the Commission is presented hereafter.

### **2. CONTENT OF THE PROPOSAL**

(1) Accounts of the Commission for own resources (Article 9 of Regulation No 609/2014)

a) Specifying the entities responsible for opening and keeping the account:

According to Article 9 of Regulation No 609/2014 Member States have to keep an account for own resources in the name of the Commission with their Treasuries or appoint a body for this purpose. In practice, all Member States which have not opted for the Treasury have appointed the national central bank. Article 9 should reflect this practice by specifying that only central banks may be appointed. In addition, this will prevent the EU budget from being exposed to any potential financial risks linked with the Commission keeping own resources in accounts opened with commercial banks; such situation is to be avoided given the limitations imposed by this Regulation on the possibilities for the Commission to draw funds from the own resources accounts. In order to ensure consistency this amendment is also inserted in Article 6 of Regulation No 609/2014 dealing with the entry in the accounts and reporting and in Article 15 dealing with the execution of payment orders.

b) Ensuring that own resources accounts are kept free of any charge and negative interest:

These accounts opened by the Member States in the name of the Commission pursuant to Article 9 of Regulation 609/2014, for the purpose of depositing EU own resources, until they need to be used by the Commission for payment, should not only be kept free of charges, but also free of interest (positive or negative). The purpose of this provision is to prevent losses for the EU budget.

Given the provisions of Article 14(1) of Regulation No 609/2014, which limit the possibility for the Commission to draw funds to the extent needed to implement the budget, any charge applied to those accounts would be equivalent to a reduction of the funds available to the EU budget. In this respect, negative interest should equally be avoided as it has the same negative effect as charges. The application of charges or negative interest to some of these Commission's accounts would also lead to unequal treatment of Member States as, in line with the principles of solidarity and joint financing of the EU budget, the other Member States have to compensate this loss through the GNI-based resource. Therefore, it is proposed that the Member State concerned should compensate the EU budget for any charge or negative interest applied to the account for own resources it has opened in the name of the Commission pursuant to Article 9 of Regulation 609/2014.

This amendment further ensures that the EU budget is not negatively affected by Decision 2014/337/EU (ECB/2014/23) of the European Central Bank of 5 June 2014<sup>1</sup>, providing for a negative interest rate which entails a payment obligation of the deposit holder to the relevant national central bank (NCB) including the right of that NCB to debit the relevant government deposit account accordingly, or by similar decisions by other EU central banks where EU own resources have to be kept in accordance with Article 9 of Regulation No 609/2014. The obligation to provide compensation should ensure that the cost of any negative interest already applied to accounts for own resources following this ECB Decision is not borne by the EU budget, i.e. by all Member States. In this context, it should be recalled that, so far, the Commission has not requested Member States to remunerate accounts for own resources in case of positive ECB deposit rates.

c) Additional clarification:

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<sup>1</sup> 2014/337/EU: Decision of the European Central Bank of 5 June 2014 on the remuneration of deposits, balances and holdings of excess reserves (ECB/2014/23), OJ L 168, 7.6.2014, p. 115.

In the interest of legal certainty it should be clarified that the Commission's own resources accounts referred to under Article 9 may only be debited on Commission's instruction where the net amount of own resources due on a given date is negative (i.e. where a Member State is to receive funds). Any entries in this account shall be made in accordance with the above principle. This is an explicit clarification of already existing requirements.

(2) Bringing forward monthly twelfths of VAT and GNI-based own resources (Article 10(3) of Regulation No 609/2014)

Pursuant to Article 10(3) of Regulation 609/2014, depending on the Union's cash position, for the specific needs of European Agricultural Guarantee Fund (EAGF) payments, Member States may be invited to bring forward by one or two months in the first quarter of the year monthly twelfths of the VAT and GNI-based own resource.

In the last years, due to high monthly payments for European Agricultural Guarantee Fund (EAGF) and European Structural and Investment Funds (ESIF) in the first months of the year, the Commission has been repeatedly confronted with difficulties in implementing all payments timely due to temporary shortages of treasury resources amounting to up to EUR 6 billion during the first semester of the year. Therefore it should be possible that another twelfth can be brought forward in the first six months of the year if necessary, and this also for paying expenditure of the European Structural and Investment Funds (ESIF). This limited additional flexibility would help the Commission to comply with the regulatory requirements for payments.

(3) Streamlining the annual adjustments to the VAT and GNI-based own resources (Article 10(4) to (7) of Regulation No 609/2014)

Pursuant to Article 10 of Regulation No 1150/2000, the adjustment 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). Under exceptional circumstances these adjustments may result in very high amounts. For Member States the obligation to make available such high amounts may represent a high financial burden which may cause a severe fiscal strain, particularly towards the end of the year. Similarly, the obligation for the Commission to refund high amounts, if the total amount of adjustments is negative, may lead to a difficult treasury situation at this period of the year.

As the data received in September/October 2014 demonstrate, adjustments may be exceptionally high for the GNI own resource because of major revisions made by Member States to their GNI data for previous years.

Therefore, upon a proposal by the Commission, on 18 December 2014 the Council adopted Regulation 1377/2014 amending Regulation 1150/2000<sup>2</sup>, 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.

Regulation 1150/2000 as amended by Regulation 1377/2014 will be repealed once Regulation No 609/2014 enters into force, i.e. on the same day as Own Resources Decision No 335/2014 after this Decision has been approved by all Member States in accordance with their respective constitutional requirements. Therefore, the present amendment should also address the issue of VAT and GNI adjustments.

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<sup>2</sup> OJ L 367, 23.12.2014, p. 14.

While the proposed amendment maintains the calculation method it modifies the timing for the communication and the due date for making available the adjustments. In addition, it addresses the issue of high negative adjustments.

The Member States have to transmit to the Commission in year  $n$  the VAT and GNI data for year  $n-1$  and previous years in accordance with Article 7(1) of Regulation No 1553/89 and Article 2(2) of Regulation No 1287/2003. On this basis, the Commission will calculate the adjustments and the exact final amounts will be formally notified to Member States in January of year  $n+1$ .

At the same time the Commission would provide a calculation redistributing the total amount of adjustments among Member States, according to their respective share in the GNI of all Member States (“the GNI key”) of the budget of year  $n+1$ <sup>3</sup>. There will be no more amending budget to this effect as adjustments will be automatically and immediately redistributed. This is a major simplification of the current system.

The difference between the individual amount of the VAT and GNI adjustments for a given Member State and the result of the redistribution for that Member State, shall be entered in the own resources accounts under Article 9 on the first working day of June of year  $n+1$ . As Member States would be informed well in advance under the proposed procedure, there should be no more need for special rules for amounts which are exceptionally high. The new timing of the VAT and GNI adjustments will no longer coincide with the opt-out adjustment under Article 11 of Regulation No 609/2014 for Member States not taking part in the financing of a specific Union action or policy. For the opt-out adjustment, whose financial impact is limited<sup>4</sup>, the current due date is maintained, i.e. the first working day of December.

The EU national accounting rules are set out in the European System of Accounts (ESA 2010). These rules apply the accruals principle to the recording of economic flows – “*when economic value is created, transformed or extinguished, or when claims and obligations arise, are transformed, or are cancelled*”. Under ESA 2010, Member States’ VAT and GNI-based budgetary contributions are recorded as general government expenditure, as another current transfer under the dedicated category D.76, and impacting on the government deficit. Contributions returned to EU Member States are netted off these current transfers. The point of recording of the government expenditure impact of the adjustments to VAT and GNI-based own resources should be made when those amounts are irrevocably fixed and therefore they are due to be paid. Taking into account that it is proposed that the amounts are irrevocably fixed and due to be paid in year  $n+1$ , this is this year which should be relevant for statistical recording of the adjustments, as well as for the purposes of the Stability and Growth Pact.

(4) Postpone time-barring of GNI data in the fourth year after a given financial year (Article 10(7) of Regulation No 609/2014)

Currently, Member States should provide the Commission with figures for aggregate GNI and its components by 22 September each year (Article 2(2) of Regulation No 1287/2003) while changes to GNI can only be taken into account until 30 September of the fourth year after a given financial year. Consequently, there is a very short period for assessing any changes transmitted in year  $n+4$  in relation to year  $n$ . In order to ensure that GNI data for year  $n$  can still be verified and validated by the GNI Committee the limitation period under Article 10(7) of Regulation No 609/2014 should be extended from 30 September to 30 November of year  $n+4$ .

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<sup>3</sup> The current system also uses the most recent GNI key available for the purposes of the amending budget redistributing the adjustments (if the Commission proposes one and if it is adopted by the European Parliament and the Council).

<sup>4</sup> For the last five years the total average amount is EUR 49 million.

Accordingly, the minimum period under Article 3 of Regulation No 609/2014 for keeping supporting documents relating to the statistical procedures and bases referred to in Article 3 of Regulation No 1287/2003 should also be extended from 30 September to 30 November of year n+4.

(5) Streamlining the structure of Article 10 of Regulation No 609/2014

Article 10 of Regulation No 609/2014 currently contains 9 paragraphs and more than 20 subparagraphs. In order to improve readability it should be split into 3 separate Articles, titles should be added to each of them and paragraphs should be numbered whenever appropriate.

(6) Interest rate (Article 12 of Regulation No 609/2014)

The interest rate in Article 12 currently provides for a basic rate (ECB – or non-euro national central bank - main refinancing rate), a fixed annual increase by 2 percentage points and a variable increase by 0,25 of a percentage point per month of delay. The rate is applicable to the whole period of delay.

As the Commission, in the normal course of budget execution, cannot overdraw on its accounts, timely payment of own resources is essential. The current system has been instrumental in ensuring that the own resources needed for the execution of the budget are made available timely and in full<sup>5</sup>. The revised rules on interest should preserve this incentive. In addition, the uniformity of the rules should also be maintained in the interest of clarity and legal certainty.

In order to reinforce the smooth functioning of the system, namely that own resources are paid timely and in full, the fixed increase should be raised to 3,5 percentage points (this is inter alia the rate applicable to amounts to be recovered pursuant to Article 83(2)b of the Rules of Application of the Financial Regulation where the obliging event is not a public supply or service contract). This should ensure that payment of own resources is not withheld where the refinancing costs on money markets would be lower than the interest payable. The proposal should in particular prevent (short) delays in making available the monthly twelfths of the VAT and GNI-based own resources, which currently constitute more than 80 % of the EU budget revenue.

On the other hand, as the current rules may lead to very high interest rates for long time periods of delay, the maximum annual increase to the basic rate should be capped at 20 percentage points, the increased rate being applicable to the whole period of delay. This capping ensures proportionality as after 5,5 years of delay there will be no further increase in the interest rate. This amendment should address the main concern of some Member States as regards individual cases of very high interest rates due to long delays in the area traditional own resources. In fact, on the basis of the data on amounts of interest recovered in the last 5 years the 20 percentage points cap would result in a decrease of the interest due by Member States by more than 30 %.

The new rules shall be applicable to amounts of own resources which are due after the entry in force of the proposed Regulation. However, in order to ensure a smooth transition, the capping of the interest rate shall also apply where the amount of own resources became known to the Commission or to Member States only after the entry in force of the proposed Regulation. For example, for a case where an own resource which should have been made available in 2010, but becomes known only after the entering into force of the proposed

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<sup>5</sup> This was most recently confirmed by the First Assessment Report of the High Level Group on Own Resources dated 17 December 2014: the first paragraph on page 13 reads “The high late payment interests foreseen in the EU budget rules have been an effective mechanism to ensure timely payment by Member States.”

Regulation (e.g. in 2018), the interest rate according to the current rules would apply, however the increase to the annual rate of interest would be subject to the capping at 20 percentage points.

In order to avoid confusion the Commission will clearly specify the applicable interest rules when sending letters calling for interest after the entry into force of the proposed Regulation.

(7) Possibility to release Member States 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 (Article 13(2) of Regulation No 609/2014)

Pursuant to Article 13(2) of Regulation 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.

The new Union Customs Code<sup>6</sup> (UCC), which enters into force on 1 May 2016, allows Member States to defer the notification and the entry of the customs debt in the accounts until such time as it no longer prejudices criminal investigations<sup>7</sup>. Indeed, promptly notifying debtors suspected of criminal activities may hinder the fight against fraud and the dismantling of criminal networks. Moreover, Article 325 TFEU requires Member States to take the same measures to counter fraud affecting the financial interests of the Union as for their own financial interests. Covert investigations are effective and necessary measures for protecting both the financial interests of the EU and of the Member States.

However, there is no explicit rule in the own resources legislation on whether traditional own resources which cannot be recovered due to such late notifications can be waived. The UCC regulates the relationship between importers and national customs authorities, while the own resources legislation deals with the relationship between Member States and the Commission.

In order to promote effective protection of the financial interests of the Union and to take into account the newly introduced provisions of the UCC it is proposed to introduce an explicit provision allowing to release - under certain conditions to be observed strictly - Member States from their financial responsibility for amounts of traditional own resources that may prove irrecoverable due to deferred notification of customs debts in order not to prejudice criminal investigations and fight against fraud. In order to accept that in such cases amounts are irrecoverable “for other reasons which cannot be attributed” to the Member State concerned (the point below deals with the threshold for reporting) the Commission would verify in particular whether:

- the criminal investigations were justified to protect both the EU's and Member State's financials interest and were carried out diligently;
- the loss of own resources was strictly due to the delayed notification or entry in the accounts required by the criminal investigations, and
- national duties and taxes were not subject to a more favourable treatment than traditional own resources.

(8) Raising the threshold for irrecoverable amounts to be reported (Article 13(3) of Regulation No 609/2014)

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<sup>6</sup> 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.

<sup>7</sup> Articles 102 (3) and 105(6) UCC.

The threshold for Member States to report to the Commission cases of traditional own resources declared or deemed irrecoverable under Article 13(3) of Regulation 609/2014 should be increased from EUR 50 000 to EUR 100 000 in order to reduce administrative burden for the Member States and for the Commission. This amendment does not affect the definition of a “case” to be reported, namely that the report shall cover all entitlements established as a result of the findings of the same clearance or post clearance control to the same operator and relating to the same irregularity or the same type of goods where, regardless of their individual amount, the total amount of these entitlements declared or deemed irrecoverable exceeds EUR 100 000.

As the obligation of Member States to report pursuant to Article 5 of Regulation No 608/2014 fraud and irregularity cases of over EUR 10 000 to the OWNRES database remains, such cases may still be inspected by the Commission and subsequently lead to payments to the EU budget.

(9) Clarification on exceptional management of cash resources solely in the case of default on loans (Article 14(3) of Regulation No 609/2014)

Pursuant to Article 14(3) of Regulation 609/2014, in the sole case of default under a loan contracted or guaranteed pursuant to Council regulations and decisions, the Commission may, if no other measures provided for by the financial arrangements applying to these loans, draw in excess of its assets in order to service the Union’s debts, irrespective of the conditions of paragraph 2 of that Article.

Following the entry into force of the Lisbon Treaty, depending on the competence under which guarantees or loans have been granted, some of the regulations and decisions previously adopted by the Council are now adopted by both the European Parliament and the Council. This is the case for example for decisions of the European Investment Bank (EIB) on EIB financing operations carried out under the external mandate with EU guarantee, or for Macro-Financial Assistance to third countries (which are however primarily covered by the External Guarantee Fund). While the scope of this provision shall not be extended, it should just be clarified that it covers the same legal acts which were covered originally.



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**

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<sup>8</sup>,

Having regard to the opinion of the European Court of Auditors<sup>9</sup>,

Whereas:

- (1) Council Regulation (EC, Euratom) No 1150/2000<sup>10</sup> was recast by Council Regulation (EU, Euratom) No 609/2014<sup>11</sup>. Regulation (EU, Euratom) No 609/2014 enters into force on the day of entry into force of Council Decision 2014/335/EU, Euratom<sup>12</sup>. That Decision has not yet entered into force, as it needs to be approved by all Member States.
- (2) In order to take into due consideration the timing of the opinion of the gross national income (GNI) Committee on GNI data and to allow sufficient time for assessment of relevant data by the Commission (Eurostat) any changes to the GNI of previous financial years should be possible until 30 November of the fourth year after a given financial year. Accordingly, the period for keeping supporting documents related to the value added tax (VAT) and GNI own resources should also be extended from 30 September to 30 November of the fourth year following the financial year to which they refer.
- (3) The Commission accounts for own resources purposes to be opened by Member States under Article 9 of Regulation (EU, Euratom) No 609/2014 should be kept by the treasury of the Member State or by the central bank of the Member State and should

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<sup>8</sup> OJ C [...], [...], p. [...].

<sup>9</sup> Opinion No [...] of [...] (OJ C [...], [...], p. [...]).

<sup>10</sup> 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).

<sup>11</sup> 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>12</sup> 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).

be kept free of any charge and interest. Any such charges or negative interest would reduce the Union's budget and lead to unequal treatment of Member States. Therefore, Member States which apply such charges or negative interest to the Commission accounts for own resources should compensate the budget of the Union.

- (4) It should be clarified that the Commission's own resources accounts opened by Member States under Article 9 of Regulation (EU, Euratom) No 609/2014 may only be debited upon Commission's instruction.
- (5) In the interest of clarity and readability Article 10 of Regulation (EU, Euratom) No 609/2014 should be split into several Articles.
- (6) It should be ensured that the Commission has at any time sufficient cash resources available to comply with the regulatory requirements for payments arising from the implementation of the budget, which are particularly concentrated in the first six months of the year, in particular 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<sup>13</sup> and of the European Structural and Investment Funds pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council<sup>14</sup>. In order to reduce the risk of payment delays experienced in the past years due to temporary shortages of treasury resources, the Commission should be allowed to bring forward up to one more twelfth, in so far as it is justified by cash requirements.
- (7) Pursuant to Regulation (EU, Euratom) No 1150/2000, the Commission is to calculate and inform Member States of adjustments to the VAT and GNI-based own resources in time for them to enter these adjustments in the Commission's account on the first working day of December.
- (8) The amounts of the adjustments to be made available on the first working day of December 2014 have been 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<sup>15</sup> amended Regulation (EC, Euratom) No 1150/2000 by allowing to defer, under certain exceptional circumstances, the entry of these adjustments in the Commission's account.
- (9) Regulation (EC, Euratom) No 1150/2000 as amended by Regulation (EU, Euratom) No 1377/2014 will no longer apply once Regulation (EU, Euratom) No 609/2014 enters into 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. Accordingly, there

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<sup>13</sup> Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

<sup>14</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

<sup>15</sup> Council Regulation (EU, Euratom) No 1377/2014 of 18 December 2014 amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 2007/436/EC, Euratom on the system of the European Communities' own resources (OJ L 367, 23.12.2014, p. 14).

should be more time between the formal notification of the amounts to Member States and the date to enter them in the Commission's own resources account. The notification and the due date for the entry in the accounts 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. Moreover there should be an immediate redistribution of the total amount of adjustments among Member States according to their respective shares in the GNI-based own resource. Given that the impact of the adjustments will be known well in advance and will be automatically redistributed among Member States there should be no more need for derogations such as that introduced by Regulation (EU, Euratom) No 1377/2014.

- (11) The procedure for calculating interest should ensure in particular that own resources are made available timely and in full, which is essential for attaining the Union's objectives and carry through its policies.
- (12) The rate set in Article 12 of Regulation (EU, Euratom) No 609/2014 contains a fixed increase to the basic rate of 2 percentage points 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. This provision taken over from Article 11 of Regulation (EU, Euratom) No 1150/2000 has been instrumental in ensuring that own resources are made available timely and in full. The main elements of the current system should therefore be maintained and, where appropriate, adjusted.
- (13) Nevertheless, the existing rules providing for an ever increasing rate have led to the payment of very high interest in exceptional cases in the area of traditional own resources sometimes involving delays of many years. In order to ensure the proportionality of the system while maintaining the deterrent effect, the maximum annual increase to the basic rate should be limited to 20 percentage points.
- (14) On the other hand, the fixed increase by two percentage points pursuant to Article 12 of Regulation (EU, Euratom) No 609/2014, for short periods of delay in particular, may lead to a disincentive to make own resources available timely if refinancing costs on the money market are lower than the interest payable. Therefore, in order to further reinforce the smooth functioning of the system the fixed rate of increase should be raised to 3,5 percentage points. 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.
- (15) 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<sup>16</sup> it should be explicitly provided for the possibility to release, under certain conditions to be observed strictly, Member States from the obligation to make available to the Union's budget amounts of traditional own resources which prove irrecoverable due to deferred entry in the accounts or deferred notification of customs debts in order not to prejudice criminal investigations.
- (16) The threshold for Member States to report to the Commission cases of traditional own resources declared or deemed irrecoverable should be raised in order to reduce administrative burden for the Member States and for the Commission.
- (17) 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

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<sup>16</sup> 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).

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.

- (18) Regulation (EU, Euratom) No 609/2014 should therefore be amended accordingly.
- (19) For reasons of consistency, this Regulation should enter into force on the same day as Regulation (EU, Euratom) No 609/2014 and should also apply from the date of application of that Regulation. While Regulation (EU, Euratom) No 609/2014 is to apply from 1 January 2014, some provisions of this Regulation should apply only after the entry into force of this Regulation. Amendment to Article 12 of Regulation (EU, Euratom) No 609/2014 should apply where the due date of the own resource is after the entry into force of this Regulation. However Member States should benefit from the limitation on the total increase of the interest rate also where the own resource became known after the entry into force of this Regulation.

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 or the national central bank of each Member State and 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 the 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 the first indent of 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:
- "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 or national central bank. This account may only be debited upon instruction by the Commission.

That account shall be kept in national currency and free of any charge and interest."

- (ii) the following third subparagraph is added:

"Each Member State shall compensate the Commission for any charges or negative interest applied to this account on the first working day of the second month following the application of these charges or negative interest."

- (b) paragraph 2 is replaced by the following:

"2. Member States or their national central banks shall transmit the following to the Commission, by electronic means:

- (a) on the working day on which the own resources are credited to the account of the Commission, a statement of account or a credit advice showing the entry of the own resources;
- (b) without prejudice to point (a), at the latest on the second working day following the crediting of the account, a statement of account showing the entry of the own resources."

- (4) Article 10 is replaced by the following:

*“Article 10*

**Making available the traditional own resources**

1. After deduction of collection costs in accordance with Article 2(3) and Article 10(3) of Decision 2014/335/EU, Euratom, entry of the traditional own resources referred to in Article 2(1)(a) of that Decision shall be made at the latest on the first working day following the nineteenth day of the second month following the month during which the entitlement was established in accordance with Article 2 of this Regulation.

However, for entitlements shown in separate accounts under the second subparagraph of Article 6(3), the entry must be made at the latest on the first working day following the nineteenth day of the second month following the month in which the entitlements were recovered.

2. If necessary, Member States may be invited by the Commission to bring forward by one month the entry of resources other than the VAT-based own resource and the GNI-based own resource on the basis of the information available to them on the fifteenth of the same month.

Each entry brought forward shall be adjusted the following month when the entry mentioned in paragraph 1 is made. This adjustment shall entail the negative entry of an amount equal to that given in the entry brought forward.

*Article 10a*

### **Making available the VAT and GNI-based own resources**

1. The VAT-based own resource and the GNI-based own resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to Denmark, the Netherlands, Austria and Sweden, shall be credited on the first working day of each month, the amounts being one-twelfth of the relevant totals in the budget, converted into national currencies at the rates of exchange of the last day of quotation of the calendar year preceding the budget year, as published in the *Official Journal of the European Union*, C Series.
2. For the specific needs of paying expenditure of the EAGF pursuant to Regulation (EU) No 1307/2013 of the European Parliament and of the Council\* and of the European Structural and Investment Funds pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council\*\*, and depending on the Union's cash position, Member States may be invited by the Commission to bring forward by up to three months in the first six months of the financial year the entry of one-twelfth or a fraction of one-twelfth of the amounts in the budget for the VAT-based own resource and the GNI-based own resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to Denmark, the Netherlands, Austria and Sweden.

After the first six months, the monthly entry requested may not exceed one-twelfth of the VAT and GNI-based own resources, while remaining within the limit of the amounts entered in the budget for that purpose.

The Commission shall notify the Member States thereof in advance, no later than two weeks before the entry requested.

Paragraph 4 concerning the amount to be entered in January each year and paragraph 5 applicable if the budget has not been finally adopted before the beginning of the financial year shall apply to these advance entries.

3. Any change in the uniform rate of the VAT-based own resource, in the rate of the GNI-based own resource, in the correction granted to the United Kingdom for budgetary imbalances and in its financing referred to in Articles 4 and 5 of Decision 2014/335/EU, Euratom, and in the financing of the gross reduction granted to Denmark, the Netherlands, Austria and Sweden shall require the final adoption of an amending budget and shall give rise to readjustments of the twelfths which have been entered since the beginning of the financial year.

These readjustments shall be carried out when the first entry is made following the final adoption of the amending budget if it is adopted before the sixteenth of the month. Otherwise they shall be carried out when the second entry following final adoption is made. By way of derogation from Article 11 of the Financial Regulation, these readjustments shall be entered in the accounts in respect of the financial year of the amending budget in question.

4. Calculation of the twelfths for January of each financial year shall be based on the amounts provided for in the draft budget, referred to in Article 314(2) of the Treaty on the Functioning of European Union (TFEU) and converted into national currencies at the rates of exchange of the first day of quotation following 15 December of the calendar year preceding the budget year; the adjustment shall be made with the entry for the following month.

5. If the budget has not been finally adopted at the latest two weeks before the entry for January of the following financial year, the Member States shall enter on the first working day of each month, including January, one-twelfth of the amount of the VAT-based own resource, and the GNI-based own resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to Denmark, the Netherlands, Austria and Sweden, entered in the last budget finally adopted; the adjustment shall be made on the first due date following final adoption of the budget if it is adopted before the sixteenth of the month. Otherwise, the adjustment shall be made on the second due date following final adoption of the budget.
6. There shall be no subsequent revision of the financing of the gross reductions granted to Denmark, the Netherlands, Austria and Sweden in the event of modifications of the GNI data pursuant to Article 2(2) of Regulation (EC, Euratom) No 1287/2003.

*Article 10b*

**Adjustments to the VAT and GNI-based own resources of previous financial years**

1. Each Member State shall, on the basis of the annual statement on the VAT-based own resource base provided for in Article 7(1) of Regulation (EEC, Euratom) No 1553/89, be debited in the year following the transmission of that statement with an amount calculated from the information contained in that statement by applying the uniform rate adopted for the financial year to which the statement relates and credited with the 12 payments made for that financial year. However, each Member State's VAT-based own resource base to which that rate is applied may not exceed the percentage determined by Article 2(1)(b) of Decision 2014/335/EU, Euratom of its GNI, as referred to in the first subparagraph of Article 2(7) of that Decision.
2. Any corrections to the VAT-based own resource base under Article 9(1) of Regulation (EEC, Euratom) No 1553/89 shall give rise for each Member State concerned whose base, allowing for those corrections, does not exceed the percentages determined by Articles 2(1)(b) and 10(2) of Decision 2014/335/EU, Euratom to the following adjustments to the balance referred to in paragraph 1 of this Article:
  - (a) the corrections under the first subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 made by 31 July shall give rise to a general adjustment in the following year;
  - (b) where the measures which the Commission takes under the second subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 to correct the base lead to a particular adjustment of the entries in the account referred to in Article 9(1) of this Regulation, that adjustment shall be made on the date specified by the Commission pursuant to those measures. However, a particular adjustment may be entered at any time if the Member State concerned and the Commission are in agreement in accordance with the first subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89.

The changes to GNI referred to in paragraph 4 shall also give rise to an adjustment of the balance of any Member State whose VAT-based own resource base, allowing for the corrections referred to in the first subparagraph of this paragraph, is capped at the percentages determined by Article 2(1)(b) and Article 10(2) of Decision 2014/335/EU, Euratom.

3. On the basis of figures for aggregate GNI at market prices and its components from the preceding year, supplied by the Member States in accordance with Article 2(2) of Regulation (EC, Euratom) No 1287/2003, each Member State, in the year following the year of supply of the figures, shall be debited with an amount calculated by applying to its GNI the rate adopted for the year preceding the year of supply of the figures and credited with the payments made during that year.
4. Any changes to the GNI of previous financial years pursuant to Article 2(2) of Regulation (EC, Euratom) No 1287/2003, subject to Article 5 thereof, shall give rise for each Member State concerned to an adjustment to the balance established pursuant to paragraph 3 of this Article. After 30 November of the fourth year following a given financial year, any changes to GNI shall no longer be taken into account, except on points notified within this time limit either by the Commission or by the Member State.
5. For each Member State, the Commission shall calculate the difference between the amount resulting from the adjustments referred to in paragraphs 1 to 4, with the exception of particular adjustments pursuant to paragraph 2(b), and the product of multiplying the total amount of adjustments by the percentage that the GNI of that Member State represents of the GNI of all Member States, as applicable on 15 January to the budget in force for the year following the year of supply of the data for the adjustments.

For the purposes of this calculation, amounts shall be converted between the national currency and the euro at the rates of exchange of the last day of quotation of the calendar year preceding the year of entry in the accounts, as published in the *Official Journal of the European Union, C Series*.

The Commission shall inform the Member States of the amounts resulting from this calculation before 1 February of the year following the year of supply of data for the adjustments. Each Member State shall enter the net amount in the account referred to in Article 9 on the first working day of June of that same year.

6. The operations referred to in paragraphs 1 to 5 of this Article constitute modifications to revenue in respect of the financial year in which they are to be entered in the account referred to in Article 9.

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\* Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

\*\* Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320)."



- (5) in Article 11, paragraph 2 is replaced by the following:

“2. The Commission shall calculate the adjustment during the year following the financial year concerned.

The calculation shall be made on the basis of the following figures relating to the relevant financial year:

- (a) aggregate GNI at market prices and its components, supplied by the Member States in accordance with Article 2(2) of Regulation (EC, Euratom) No 1287/2003;
- (b) the budgetary outturn of operational expenditure corresponding to the measure or policy in question.

The adjustment shall be equal to the product of multiplying the total amount of the expenditure in question, with the exception of that financed by participating third countries, by the percentage that the GNI of the Member State entitled to the adjustment represents of the GNI of all Member States. The adjustment shall be financed by the participating Member States according to a scale determined by dividing their respective GNI by the GNI of all the participating Member States. For the purposes of calculating the adjustment, amounts shall be converted between the national currency and the euro at the exchange rate on the last day of quotation of the calendar year preceding the budget year concerned.

The adjustment for each relevant year shall be made only once and it shall be final in the event of subsequent modification of the GNI figure.”

- (6) in Article 12, paragraphs 2 and 3 are replaced by the following:

“2. In the case of Member States belonging to the Economic and Monetary Union, the interest rate shall be equal to the rate as published in the *Official Journal of the European Union*, C series which the European Central Bank applied to its main refinancing operations, on the first day of the month in which the due date fell, increased by 3,5 percentage points.

This rate shall be increased by 0,25 of a percentage point for each month of delay.

The total increase pursuant to the first and the second subparagraphs shall not exceed 20 percentage points. The increased rate shall be applied to the entire period of delay.

3. In the case of Member States not belonging to the Economic and Monetary Union, the rate shall be equal to the rate applied on the first day of the month in question by the Central Banks for their main refinancing operations, increased by 3,5 percentage points, or, for the Member States for which the Central Bank rate is not available, the most equivalent rate applied on the first day of the month in question on the Member State's money market, increased by 3,5 percentage points.

This rate shall be increased by 0,25 of a percentage point for each month of delay.

The total increase pursuant to the first and the second subparagraphs shall not exceed 20 percentage points. The increased rate shall be applied to the entire period of delay.”

- (7) Article 13 is amended as follows:

- (a) in paragraph 2, the following second subparagraph is inserted:

“Member States shall also be released from the obligation referred to in the first subparagraph where the entry in the accounts or the notification of the customs debt in accordance with the customs regulations are deferred in order

not to prejudice a criminal investigation and established entitlements prove irrecoverable strictly due to that deferral, and where the following conditions are complied with:

- (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."

(b) in paragraph 3, the first subparagraph is replaced by the following:

“Within three months of the administrative decision mentioned in paragraph 2 or in accordance with the time limits referred to in that paragraph, Member States shall provide a report to the Commission with information on those cases where paragraph 2 has been applied provided the established entitlements involved exceed EUR 100 000.”

(8) in Article 14, paragraph 3 is replaced by the following:

“3. In the sole case of default under a loan contracted or guaranteed pursuant to regulations and decisions adopted by the Council, or by the European Parliament and the Council, in circumstances in which the Commission cannot activate other measures provided for by the financial arrangements applying to these loans in time to ensure compliance with the Union's legal obligations to the lenders, paragraphs 2 and 4 may provisionally be applied, irrespective of the conditions in paragraph 2, in order to service the Union's debts.”

(9) Article 15 is replaced by the following:

#### *“Article 15*

#### **Execution of payment orders**

1. The Member States, or the national central bank, shall execute the Commission's payment orders following the Commission's instructions and within not more than three working days of receipt. However, in the case of cash movement transaction, the Member States shall execute the orders within the period requested by the Commission.
2. The Member States, or the national central bank, shall send to the Commission, by electronic means and on the second working day following the completion of each transaction at the latest, a statement of account showing the related movements.”

#### Article 2

1. This Regulation shall enter into force on the date of entry into force of Regulation (EU, Euratom) No 609/2014.

Subject to paragraphs 2 and 3 it shall apply from 1 January 2014.

2. Point 1, point 2(b), point 3(a)(ii), points 4 and 7 of Article 1 shall apply from the date of entry into force of this Regulation.

The second paragraph of Article 3, the third subparagraph of Article 6(3), Article 10 and paragraphs 2 and 3 of Article 13 of Regulation No 609/2014 in its version before

the date of entry into force of this Regulation shall apply for the period between 1 January 2014 and the date of entry into force of this Regulation.

3. Article 1(6) of this Regulation shall apply to the calculation of interest for late payment of own resources that are due after the date of entry into force of this Regulation. However, the limitation on the total increase of the interest rate shall also apply to the calculation of interest for late payment of own resources that were due prior to the date of entry into force of this Regulation and became known to the Commission or to the Member State concerned only after the date of entry into force of this Regulation.

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

Done at Brussels,

*For the Council  
The President*

## LEGISLATIVE FINANCIAL STATEMENT

### NAME OF THE PROPOSAL:

Amendment of Regulation 609/2014

### 1. BUDGET LINES:

Chapter 31, 32 and Article 700

### 2. FINANCIAL IMPACT

- Proposal has no financial implications
- Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(EUR million to one decimal place)

Budget line	Revenue <sup>17</sup>	12 month period, starting dd/mm/yyyy	[Year n]
Article	<i>Impact on own resources</i>		
Article	<i>Impact on own resources</i>		

Situation following action					
	[n+1]	[n+2]	[n+3]	[n+4]	[n+5]
Article					
Article					

### 3. ANTI-FRAUD MEASURES

No measures to be taken.

### 4. OTHER REMARKS

The clarification that Commission's accounts pursuant to Article 9 of Regulation 609/2014 shall be kept free of any charges or interest prevents that the Union's budget revenue is lowered due to such charges and/or interest.

Adjustments to the VAT and GNI-based own resources: As amounts, which can be positive or negative, are unknown, there is only p.m. in title 3 (chapters 31 and 32) of the budget. In the year after the entering into force there will be no balances due to the proposed postponement. The budgetary effect of the proposed 'netting' of the total of MS balances is budgetary neutral for the Commission.

<sup>17</sup> In the case of traditional own resources (agricultural duties, sugar levies, customs duties), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.

Interest on own resources made available belatedly: Interest is in the nature of transactions which the European Commission or the Budgetary Authority cannot be supposed to contemplate with any degree of predictability or accuracy when the budget is prepared and adopted. Nonetheless a token amount of EUR 5 million is entered into the revenue side of the budget every year under line 7000 in order to facilitate the correct budget treatment of any amounts received due to interest. The annual accounts present the actual amounts received.