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2018/0132 (APP)

Amended proposal for a

COUNCIL REGULATION

amending Regulation (EU, Euratom) 2021/768 of 30 April 2021 as regards implementing measures for new own resources of the European Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Objectives of the proposal**

In December 2021, the Commission proposed three new sources of revenues for the EU budget¹, namely a contribution from the emission trading system (ETS), from the carbon border adjustment mechanism (CBAM) and an own resource based on a share of residual profits from multinationals that will be re-allocated to EU Member States under the recent OECD/G20 agreement (“Pillar One”) (the “own resources proposal”). The proposal for a Council Regulation² amending Regulation (EU, Euratom) 2021/768 of 30 April 2021 as regards implementing measures for new own resources of the European Union (‘IMSOR’)³ lays down the Commission’s control and inspection powers which are necessary to implement these three new own resources.

More than one year later, the Commission amends this “own resources proposal”⁴ and adds a new own resource based on statistical company profits. Proposal COM(2022) 102 final must therefore be adjusted to ensure that the Commission has proportionate control and supervision powers to ensure this new own resource is correctly implemented.

Secondly, in 2023, the co-legislators adopted the CBAM Regulation. It vested the Commission with additional control and inspection powers, as compared to the initial Commission proposal of July 2021. The IMSOR must be adjusted to take stock of the centralised governance provided by the the CBAM Regulation.

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

This proposal is connected to the “Making Available Regulations”, specifically: (i) Council Regulation (EU, Euratom) No 609/2014 (for traditional own resources and the own resources based on value added tax and gross national income)⁵; and (ii) Council Regulation (EU, Euratom) No 2021/770 (for the own resource based on the plastic packaging waste)⁶.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis of this proposal is the fourth paragraph of Article 311 TFEU;

¹ Proposal for a Council Decision amending Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union (COM(2021) 570 final).

² COM(2022) 102 final.

³ Council Regulation (EU, Euratom) 2021/768 of 30 April 2021 laying down implementing measures for the system of own resources of the European Union.

⁴ COM(2023) 570 final.

⁵ 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).

⁶ Council Regulation (EU, Euratom) 2021/770 of 30 April 2021 on the calculation of the own resource based on plastic packaging waste that is not recycled, on the methods and procedure for making available that own resource, on the measures to meet cash requirements, and on certain aspects of the own resource based on gross national income, (OJ L 165, 11.5.2021, p 15).

- **Proportionality**

This proposal for a Council Regulation amending Regulation (EU, Euratom) 2021/768 adds the required measures for the new own resources. The inclusion of new own resources in the Own Resources Decision calls for updated legislation that includes implementing measures for these new own resources and that improves the existing measures.

- **Choice of the instrument**

The choice of a Council Regulation is based directly on the fourth paragraph of Article 311 of the TFEU that specifically states ‘*The Council, acting by means of regulations (...) shall lay down implementing measures for the Union’s own resources system*’.

3. CONTENT OF THE AMENDMENT

- **Additional implementing measures for the statistical company profits own resource**

The Commission proposes to calculate the contribution from Member States on the basis of the statistical company profits established under the European system of accounts 2010 (ESA 2010) in application of Regulation (EU) No 549/2013⁷.

In order to obtain an enhanced assurance on the comparability the data used by the National Statistical Institutes to compile the aggregates for the statistical company profits own resource, the Commission (Eurostat) will verify the data sources and the methodology used for compiling the data enlarging the scope of the existing GNI verifications. Therefore, the Commission (Eurostat) needs to be empowered within this regulation to perform the **required** verifications.

- **Reviewing the need for control powers in relation to the CBAM own resource**

In accordance with Article 15 and Article 19 of the CBAM regulation⁸, the Commission should carry out risk-based controls and should review the content of CBAM declarations accordingly. The Commission may carry out risk-based controls on the data and the transactions recorded in the CBAM registry to ensure that there are no irregularities in the purchase, holding, surrender, re-purchase and cancellation of CBAM certificates.

Taking stock of the controls now embedded in the sectorial legislation that includes, among others, the above mentioned tasks in application of the principle of establishing efficient and effective framework no additional on-the-spot checks and inspections are deemed necessary. Proposal COM(2022) 102 final is amended accordingly.

⁷ Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ L 174, 26.6.2013, p. 1–727).

⁸ Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (OJ L 130, 16.5.2023, p. 52).

Amended proposal for a

COUNCIL REGULATION

amending Regulation (EU, Euratom) 2021/768 of 30 April 2021 as regards implementing measures for new 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 Article 311, fourth paragraph, thereof,

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

Having regard to Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom¹, and in particular Article 10 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 Parliament²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Decision (EU, Euratom) 2020/2053, as amended by Council Decision XX/XX, introduces as new own resources the Emissions Trading System, established by Directive 2003/87/EC of the European Parliament and of the Council³, the Carbon Border Adjustment Mechanism established by Regulation (EU) 2023/956 of the European Parliament and of the Council⁴, a share of residual profit of multinational enterprises reallocated to Member States as set out in [Directive on implementation of the global agreement on re-allocation of taxing rights⁵] **and gross operating surplus as defined by the European System of Accounts 2010 set up by Regulation (EU) 549/2013⁶, consistent with the GNI data provided in accordance with Article 2 of the Regulation (EU) 2019/516⁷, and provided in**

¹ OJ L 424, 15.12.2020, p.1.

² OJ C , , p. .

³ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁴ Regulation (EU) 2023/956/EC of the European Parliament and of the Council establishing a carbon border adjustment mechanism (OJ L 130, 16.05.2023, p. 52).

⁵ [Directive (EU) XXX on implementation of the global agreement on re-allocation of taxing rights]

⁶ **Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ L 174, 26.6.2014, p. 1)**

⁷ **Regulation (EU) No 516/2019 of the European Parliament and of the Council of 19 March 2019 on the harmonisation of gross national income at market prices and repealing Council Directive**

accordance with the control framework provided by the GNI implementing act, for the sectors of non-financial and financial corporations ('statistical own resource based on company profits').

- (2) For the sake of consistency, it is necessary to lay down implementing measures concerning control and supervision together with relevant reporting requirements taking in consideration the controls and verifications performed by the Member States also for new own resources.
- (3) As a matter of efficiency and effectiveness, the implementing measures for control and supervision related to the own resource based on emissions trading should take in account the control framework established by the sectorial legislation in particular concerning the obligations related to the Emissions Trading System laid down in Directive 2014/65/EU of the European Parliament and of the Council⁸, Regulation (EU) No 600/2014/EU of the European Parliament and of the Council⁹ and Commission Regulation (EU) No 1031/2010¹⁰.
- (3a) **As a matter of efficiency and effectiveness, the implementing measures for the control and supervision related to the statistical own resource based on company profits should take into account the obligation on Member States under GNI control framework¹¹. In particular, Member States should provide, as part of the GNI inventory, detailed descriptions of the statistical sources and methods used for the compilation of annual sector accounts, with particular focus on the gross operating surplus of the sectors of non-financial and financial corporations. Also the tasks of the expert group referred to in Article 4 of the GNI regulation (EU) 2019/516 should be extended to include advising the Commission on the quality and issuing annual opinions on the appropriateness of the gross operating surplus of the sectors of non-financial and financial corporations for own resources purposes.**
- (4) To enable the implementation of control and supervision measures for new own resources, the Member States should ensure that all entities involved in the own resources processes provide access to the pertinent data and the necessary assistance to the authorised agents for carrying out their duties.
- (5) As a matter of effectiveness, the implementing measures for the control of the Carbon Border Adjustment Mechanism should apply without prejudice to the implementing measures for the verification of traditional own resources referred to in

89/130/EEC, Euratom and Council Regulation (EC, Euratom) No 1287/2003 (GNI Regulation) (OJ L 91, 29.3.2019, p. 19).

⁸ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU Text with EEA relevance, (OJ L 173, 12.6.2014, p. 349).

⁹ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

¹⁰ Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a system for greenhouse gas emission allowances trading within the Union (OJ L 302, 18.11.2010, p. 1).

¹¹ **Commission Regulation 2020/1546 of 23 October 2020 establishing the structure and detailed arrangements of the inventory of the sources and methods used to produce gross national income aggregates and their components in accordance with the European System of Accounts (ESA 2010) (OJ L 354, 26.10.2020, p. 1).**

Decision (EU, Euratom) 2020/2053 and Regulation (EU) 2023/956/EC of the European Parliament and of the Council establishing a carbon border adjustment mechanism.

- (6) The checks and enquiries conducted by Member States relating to calculating, establishing and making available the Union's own resources, and rules ensuring collaboration between the Member States and the Commission should be extended to the new own resources.
- (7) Article 325 of the Treaty on the Functioning of the European Union (TFEU) requires the Union and the Member States to counter fraud and any other illegal activities affecting the financial interests of the Union. The transparency of the system of own resources of the Union should be ensured by the provision of adequate information also on new own resources to the European Parliament and to the Council.
- (8) Reporting arrangements should be extended to new own resources in order to make it possible for the Commission to monitor the actions of Member States to recover own resources, in particular in cases of fraud and irregularities.
- (9) Council Regulation (EU, Euratom) 2021/768¹² should therefore be amended accordingly. For reasons of consistency, this Regulation should enter into force on the same day as Council Decision 20xx/xxxx/EU, Euratom amending Decision (EU, Euratom) 2020/2053 and should apply from 1 January 2023¹⁴. Article 6c should apply from the date of application of the [Directive on implementation of the global agreement on re-allocation of taxing rights] or the day of the entry into force and effect of the Multilateral Convention, whichever is the later,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU, Euratom) 2021/768 is amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The own resources referred to in Article 2(1) of Decision (EU, Euratom) 2020/2053 shall be inspected as specified in this Regulation, without prejudice to Regulation (EEC, Euratom) No 1553/89, Regulation (EU) 2019/516 of the European Parliament and of the Council¹³, Regulation (EU) No 600/2014 of the European Parliament and of the Council¹⁴,

¹² Council Regulation (EU, Euratom) 2021/768 of 30 April 2021 laying down implementing measures for the system of own resources of the European Union and repealing Regulation (EU, Euratom) No 608/2014 (OJ L 165, 11.5.2021, p. 1).

¹³ Regulation (EU) 2019/516 of the European Parliament and of the Council of 19 March 2019 on the harmonisation of gross national income at market prices and repealing Council Directive 89/130/EEC, Euratom and Council Regulation (EC, Euratom) No 1287/2003 (GNI Regulation) (OJ L 91, 29.3.2019, p. 19).

¹⁴ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 12.6.2014, p. 84).

~~and~~ Directive 2014/65/EU of the European Parliament and of the Council¹⁵ and Regulation (EU) **2023/956** of the European Parliament and of the Council establishing a carbon border adjustment mechanism¹⁶.

(b) the following paragraphs 6a, 6b, ~~and 6c~~ **and 6d** are inserted:

“6a. Where control and supervision measures concern the own resource based on the Emissions Trading System referred to in Article 2(1) point (e), of Decision (EU, Euratom) 2020/2053:

- (a) the Commission shall have access to all data of the auctioning process required to calculate the Emission Trading System based own resource, including the data referred to the Commission Regulation (EU) No 1031/2010¹⁷;
- (b) the Commission shall have access to the documentation related to the annual amount of allowances, in respect of which the relevant Member State makes use of any of the following options, with the average weighted price of allowances auctioned on the common auction platform in the year in which those allowances would have been auctioned:
 - for transitional free allocation referred to in Article 10c of Directive 2003/87/EC of the European Parliament and of the Council¹⁸;
 - the possibility of limited cancellation referred to in Article 6(1) of Regulation (EU) 2018/842 of the European Parliament and of the Council¹⁹;
 - the use of allowances referred to in Article 10d(4) of Directive 2003/87/EC to auctioning for the Modernisation Fund referred to in Article 10d(3) of that Directive.
- (c) the Commission may itself carry out on-the-spot inspections. Member States shall facilitate those inspections.

As a review measure, the Commission shall make sure that the calculations referred to in Article 2(1), point (e) of Decision (EU, Euratom) 2020/2053 are based on correct data. That shall include a check of compliance of the underlying data with Regulation (EU) No 1031/2010.

¹⁵ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

¹⁶ OJ L 130, 16.5.2023, p. 52

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

¹⁸ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

¹⁹ Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018, p. 26)

6b. Where control and supervision measures concern the own resource based on Carbon Border Adjustment Mechanism referred to in Article 2(1), point (f), of Decision (EU, Euratom) 2020/2053:

- (a) Member States shall conduct the checks and enquiries concerning the calculation and the making available of the own resource in accordance with Regulation (EU) [XXX] of the European Parliament and of the Council²⁰;
- ~~(b) the Commission may itself carry out on the spot inspections. The agents authorised by the Commission for the purpose of such inspections shall have access to documents as set out for the reviews referred to in paragraph 6a, point (b). Member States shall facilitate those inspections;~~

The Commission shall have access, in so far as the application of Regulation (EU) 2023/956 of the European Parliament and of the Council establishing a Carbon Border Adjustment Mechanism so requires, to the supporting documents concerning the making available of the own resources.

~~During the inspection referred to in the first subparagraph, point (b), of this paragraph, the Commission shall make sure in particular, that the processes and controls put in place by the Member States to verify, and aggregate the amounts are adequate and compliant with Regulation [XXX] of the European Parliament and of the Council establishing a carbon border adjustment mechanism.~~

The Commission shall make sure that the calculations made to determine the amount of the own resource referred to in Article 2(1), point (f) of Decision (EU, Euratom) 2020/2053 were made correctly. That shall include a check of compliance of the underlying data with Regulation (EU) 2023/956 of the European Parliament and of the Council establishing a carbon border adjustment mechanism.

6c. Where control and supervision measures concern the own resource based on the share of residual profit of multinational enterprises reallocated to Member States referred to in Article 2(1), point (g), of Decision (EU, Euratom) 2020/2053:

- (a) the Commission shall have access to the supporting documentation used by the Member States concerning the establishment and the making available of the own resource;
- (b) the Commission's verifications shall be carried out together with the competent authorities of the Member State concerned.

During those verifications, the Commission shall make sure that the calculations for the own resource referred to in Article 2(1), point (g) of Decision (EU, Euratom) 2020/2053 were performed correctly. That shall include a check of compliance of the underlying data with the reallocation of a share of residual profit of multinational enterprises allocated to Member States.

6d. Where the control and supervision measures concern the own resource based on the gross operating surplus for the sectors of non-financial corporations and financial corporations referred to in Article 2(1), point (h), of Decision (EU, Euratom) 2020/2053 :

- (a) before 1 October each year, Member States shall provide the Commission (Eurostat) with data for gross operating surplus (B.2g) for the sectors of**

²⁰ Regulation (EU) 2023/956/EC of the European Parliament and of the Council on the carbon border adjustment mechanism (OJ L 130, 16.05.2023, p. 52).

non-financial corporations (S.11) and financial corporations (S.12) in accordance with the definitions of the European System of Accounts 2010 (ESA 2010) established by Regulation (EU) N° 549/2013 and consistent with the GNI data provided in accordance with Article 2 of the Regulation (EU) 2019/516. This data should cover the preceding year and any changes made to previous years. Together with those data, Member States shall provide the Commission (Eurostat), with a report on quality referred to in Article 3 of the Regulation (EU) 2019/516. Furthermore, Member States shall provide to the Commission (Eurostat), as part of the GNI inventory, detailed information on the statistical sources and methods used for the compilation of annual sector accounts, with particular focus on the gross operating surplus of the sectors of non-financial and financial corporations.

- (b) the expert group referred to in Article 4 of the GNI regulation (EU) 2019/516 shall advise the Commission on the quality and issue annual opinions on the appropriateness of the gross operating surplus of the non-financial and financial sectors for own resources purposes.
- (c) the Commission shall each year inspect the aggregates provided for errors in compilation, together with the Member State concerned, especially in cases notified by the expert group referred to in Article 4 of Regulation (EU) 2019/516; in doing so, it may also examine calculations and statistical bases in individual cases, except for information about individual companies or persons, if no proper assessment would otherwise be possible;

(c) paragraph 7 is replaced by the following:

“7. The control, supervision and review measures referred to in this Article shall be without prejudice to the following:

- (a) the inspections carried out by Member States in accordance with their national laws, regulations or administrative provisions;
- (b) the measures provided for in Articles 287 and 319 of the Treaty on the Functioning of the European Union (TFEU);
- (c) the measures provided for in Article 325 TFEU and as further specified in relevant Union measures;
- (d) the inspection arrangements made pursuant to Article 322(1), point (b), TFEU;
- (e) Articles 53 and 79 of Directive 2014/65/EU;
- (f) the obligations in Regulation (EU) No 600/2014 with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives;
- (g) Articles 14 and 15 of Directive 2003/87/EC;

- (h) Regulation (EU) No 596/2014 of the European Parliament and of the Council²¹;
- (i) Regulation (EU) No 648/2012 of the European Parliament and of the Council²²;
- (j) Regulation (EU) No 909/2014 of the European Parliament and of the Council²³;

(k) Regulation (EU) 2023/956 of the European Parliament and of the Council establishing a carbon border adjustment mechanism.

(d) paragraph 8 is replaced by the following:

“8. For the purposes of the control and supervision measures under paragraphs 3 to 6c, the Commission may request the Member States to send relevant documents or reports relating to the systems used to collect own resources or to make such documents or reports available to the Commission.”;

(2) in Article 4(6), the second subparagraph is replaced by the following:

“The results and observations referred to in the first subparagraph, together with the summary report prepared in connection with controls on the own resources referred to in Article 2(1), points (b), (c) and (g) of Decision (EU, Euratom 2020/2053), shall be brought to the attention of all Member States.”.

Article 2

This Regulation shall enter into force on the day of entry into force of Decision 20xx/xxxx/EU, Euratom amending Decision (EU, Euratom) 2020/2053. It shall apply from 1 January 2023⁴.

However, Article 6c shall apply from the date of application of the [Directive on implementation of the global agreement on re-allocation of taxing rights] or the day of the entry into force and effect of the Multilateral Convention, whichever is the later.

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

Done at Brussels,

For the Council
The President

²¹ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173 12.6.2014, p. 1).

²² Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

²³ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).