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Proposal for a

COUNCIL DECISION

**amending Decision (EU, Euratom) 2020/2053 on the system of own resources of the
European Union**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The COVID-19 pandemic has caused the deepest economic recession for many decades in the EU¹, which triggered a swift and resolute policy response at both national and EU level. All Member States have adopted exceptional discretionary measures, in addition to their “automatic stabilisers” in order to support economic activity and mitigate social impacts.

The EU also took unprecedented steps to address the crisis. With a total of EUR 1.8 trillion in 2018 prices, the EU’s multiannual financial framework, coupled with the European Union Recovery Instrument (NextGenerationEU), is the largest stimulus package ever financed through the EU budget. NextGenerationEU was formally approved by the Council on 14 December 2020² with the support of the European Parliament and will deploy EUR 750 billion (2018 prices), raised on capital markets, to fund specific recovery and resilience actions in a limited period of time, in order to boost economic growth and invest in resilience and a greener and digital future.

Sufficient revenue is needed to cover the repayment of financing costs of NextGenerationEU borrowing, spread over three decades. Repayment of the principal may start before the end of the multiannual financial framework 2021-2027, if amounts not used for interest payments are lower than planned and in case new own resources are introduced³, and must be concluded by the end of 2058⁴.

In the framework of the Interinstitutional Agreement of 16 December 2020⁵, the European Parliament, the Council and the Commission stated that expenditure from the Union budget related to the repayment of the European Union Recovery Instrument should not lead to an undue reduction in programme expenditure or investment instruments under the multiannual financial framework. According to this Interinstitutional Agreement, it is also desirable to mitigate the increases in the GNI-based own resource for the Member States. The three institutions thus agreed to *“work towards introducing sufficient new own resources with a view to covering an amount corresponding to the expected expenditure related to the*

¹ The EU’s Gross Domestic Product contracted by about 5.9% in 2020 according to Eurostat data.

² Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis, OJ L 433I , 22.12.2020, p. 23.

³ The conclusions of the European Council of July 2020 also stated under Point 150 that ‘the proceeds of the new own resources introduced after 2021 will be used for early repayment of Next Generation EU borrowing’.

⁴ According to Article 5(2) of Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union (‘Own Resources Decision’), repayment of non-repayable grants cannot exceed EUR 29,25 billion per year (in 2018 prices).

⁵ Interinstitutional Agreement between the European Parliament, the Council and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap for the introduction of new own resources, OJ L 433I , 22.12.2020, p. 28–46.

repayment.”⁶ The Commission committed to propose new own resources in 2021 with a view to their introduction at the latest by 1 January 2023⁷.

2. CONTENT OF THE AMENDING PROPOSAL

The Commission proposes to introduce new own resources, vesting the EU with the necessary resources, in particular in view of new budgetary expenditure for the repayment of the financing costs of NextGenerationEU borrowing and for the Social Climate Fund⁸.

The amended proposal specifies that 25% of most revenues generated from allowances to be auctioned from the emissions trading will accrue to the EU budget. This includes revenues from the current Emissions Trading System for stationary installations and aviation for which additional allowances would be auctioned as well as its extension to maritime transport and the introduction of a separate emission trading for road transport and buildings, in line with the proposal for an amendment of Directive 2003/87/EC⁹.

Allowances auctioned by the European Investment Bank for the Innovation Fund and the initial endowment of the Modernisation Fund are excluded. In order to remain neutral, the own resource scope also includes allowances in principle dedicated for auctioning by Member States, which based on discretion exercised by Member States are transferred free of charge to the power sector, used for compliance by effort sharing sectors, or auctioned by the European Investment Bank for the Modernisation Fund.

To address possible social impacts in relation to the introduction of emissions trading for road transport and buildings, the Commission has proposed to establish a Social Climate Fund. The Fund will benefit vulnerable households, micro-enterprises and transport users. For its duration the Fund will be financed by the own resources of the Union budget, including as of 2026 the revenues from the emission trading for road transport and buildings. The total financial envelope of the Fund for the 2025-32 period will be EUR 72.2 billion in current prices, corresponding in principle to an amount equivalent to around 25% of the expected revenue from the new emissions trading system for buildings and road transport for the period 2026-2032.

A temporary solidarity adjustment mechanism is proposed to mitigate the regressive distributional impacts of the emissions trading-based own resource, introducing a maximum contribution for lower-income and carbon-intensive Member States and a minimum contribution for typically higher-income and low-carbon Member States. This will avoid that some Member States contribute disproportionally to the EU budget in comparison to the size

⁶ Annex II, point F.

⁷ Commission Work Programme 2021, COM (2020) 690 final.

⁸ Proposal for a Regulation of the European Parliament and the Council establishing a Social Climate Fund, COM(2021) 568 final.

⁹ Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757, COM/2021/551 final.

of their economy, during the period of transition to more sustainable economies and societies, and ensures a just contribution from all.

This proposal establishes that a share of the revenues from the sale of carbon border adjustment mechanism certificates will be transferred to the EU budget as own resources in the form of a national contribution.

Finally, this proposal provides that Member States will make a national contribution to the EU budget based on the share of the residual profits of the largest and most profitable multinational enterprises re-allocated to Member States in case they are end market jurisdictions where goods or services are used or consumed under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting agreement¹⁰ on a reform of the international tax framework. While work on a Multilateral Convention is still ongoing at the international level, the Commission has announced that it would table a proposal for a Council directive in 2022 ensuring a consistent implementation of the Multilateral Convention on a partial re-allocation of taxing rights.

3. LEGAL FRAMEWORK

3.1. Own Resources Decision

Pursuant to Article 311(3) of the Treaty on the Functioning of the European Union, the Council, after consulting the European Parliament "may establish new categories of own resources or abolish an existing category". This provision explicitly allows for amending the Own Resources Decision to add new own resources as agreed in the Interinstitutional Agreement.

In accordance with the special legislative procedure set out in Article 311(3) Treaty on the Functioning of the European Union, the Council adopts the revised decision by unanimity after consulting the European Parliament. The decision will enter into force once it is approved by the Member States in accordance with their constitutional requirements.

3.2. Implementing legislation

In parallel, the Council needs to amend the implementing measures related to the own resources system to ensure that they remain fit for purpose. Additionally, new making available provisions are required for all new own resources. The Commission will table the necessary proposals in the first half of 2022.

¹⁰ Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, OECD/G20 Base Erosion and Profit Shifting Project, 8 October 2021.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 311, third paragraph 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,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) NextGenerationEU, established by Council Regulation (EU) 2020/2094¹¹, will deploy EUR 750 billion in 2018 prices, raised on financial markets as a temporary recovery instrument to ensure a sustainable and resilient recovery throughout the Union and facilitate the implementation of economic support in the exceptional situation caused by the COVID-19 pandemic, and promote the green and digital transition.
- (2) The repayment of the principal of such funds to be used for expenditure under the European Union Recovery Instrument and the related interest due will have to be financed by the general budget of the Union, including by sufficient proceeds from new own resources introduced after 2021. In the framework of the Interinstitutional Agreement of 16 December 2020¹², the European Parliament, the Council and the Commission recognised the importance of the context of the European Union Recovery Instrument and acknowledged that ‘expenditure from the Union budget related to the repayment of the European Union Recovery Instrument should not lead to an undue reduction in programme expenditure or investment instruments under the MFF’. The Interinstitutional Agreement also stated that ‘it is also desirable to mitigate the increases in the GNI-based own resource for the Member States’.

¹¹ Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433I, 22.12.2020, p. 23).

¹² Interinstitutional Agreement between the European Parliament, the Council and the European Commission of 16 December 2020 on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap for the introduction of new own resources (OJ L 433I, 22.12.2020, p. 28).

- (3) The EU Emissions Trading System, established by Directive 2003/87/EC of the European Parliament and of the Council¹³, is a central part of the climate policy of the Union. Considering the close link of emissions trading to the climate policy objectives of the Union, it is appropriate to allocate a share of the revenues concerned to the Union budget.
- (4) The emissions trading own resources includes a share of revenues generated from the auctioning of allowances in all sectors falling under the scope of Directive 2003/87/EC. Under Directive 2003/87/EC and Regulation (EU) 2018/842 of the European Parliament and of the Council¹⁴, Member States may decide not to auction some of the total quantity of allowances specified under Directive 2003/87/EC or to have it transferred and auctioned for the Modernisation Fund established by that Directive. Those allowances should also be used to calculate the amount of own resources based on emission trading. It is appropriate to exclude allowances for the initial endowment of the Modernisation Fund as well as allowances for the Innovation Fund.
- (5) To avoid an excessively regressive impact on contributions from the emissions trading, a maximum contribution should be established for eligible Member States. For the period from 2023 to 2027, Member States are eligible if the gross national income per capita, measured in purchasing power standard and calculated on the basis of Union figures for 2020 is below 90% of the EU average. For the period from 2028 to 2030, the gross national income per capita in 2025 should be used. The maximum contribution should be established by comparing Member States' shares in the total emission trading based own resource with the shares of those Member States in the Union gross national income. A minimum contribution should be established for all Member States if their share of the total amount of ETS-based own resources is lower than 75% of their share in the Union gross national income.
- (6) Regulation (EU) [XXX] of the European Parliament and of the Council¹⁵ establishes a carbon border adjustment mechanism to complement the EU Emissions Trading System and to ensure the effectiveness of the climate policy of the Union. Considering the close link of the carbon border adjustment mechanism to the Union's climate policy, a share of the revenues from the sale of certificates should be transferred to the Union budget as an own resource.
- (7) In October 2021, the Organisation for Economic Co-operation and Development and the G20 Inclusive Framework on Base Erosion and Profit Shifting reached an agreement on the allocation to participating market jurisdictions of 25% of residual profits of large multinational enterprises above the profitability threshold of 10% ('OECD/G20 IF Pillar 1 Agreement'). The own resource should consist in applying a uniform call rate to the share of residual profits of the multinational enterprises, re-

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

¹⁴ 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, 19.06.2018, p. 26)

¹⁵ Regulation (EU) [XXX] of the European Parliament and of the Council establishing a carbon border adjustment mechanism (OJ L [...], [...], p. [...]).

allocated to Member States [pursuant to the Directive on implementation of the global agreement on re-allocation of taxing rights.]

- (8) The provisions concerning the contribution from the auctioning of allowances under the current Emissions Trading System should apply as of 1 January 2023. Once Directive 2003/87/EC has been amended, the provisions concerning the contribution from the auctioning of allowances under the revised Emissions Trading System should apply from the first day following the last day of the period for transposing that amendment. The provisions concerning the contribution from the carbon border adjustment mechanism should apply from the date of application of the Regulation. [The provisions on the OECD/G20 IF Pillar 1 Agreement shall enter into force once the Directive on implementation of the global agreement on re-allocation of taxing rights applies and the Multilateral Convention entered into effect.]

HAS ADOPTED THIS DECISION:

Article 1

Amendments to Decision (EU, Euratom) 2020/2053

Decision (EU, Euratom) 2020/2053 is amended as follows:

- (1) Article 2 is amended as follows:

- (a) in paragraph 1, the following point (e) is added:

“(e) the application of a uniform rate of 25% to:

- (1) the revenues generated from the auctioning of allowances by the Member States pursuant to Articles 3d, 10 and 30d of Directive 2003/87/EC of the European Parliament and of the Council¹;
- (2) the amount calculated by multiplying the annual amount of allowances in respect of which the relevant Member State applies any of the following:
 - (a) the option for transitional free allocation referred to in Article 10c of Directive 2003/87/EC;
 - (b) the possibility of limited cancellation referred to in Article 6(1) of Regulation (EU) 2018/842 of the European Parliament and of the Council²;
 - (c) 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;

¹ 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).

² 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).

with the average weighted price of allowances auctioned on the common auction platform in the year in which these allowances would have been auctioned.”

(b) in paragraph 1, the following point (f) is added:

“(f) the application of a uniform call rate equal to 75% of the revenues from the sale of certificates of the carbon border adjustment mechanism established by Regulation (EU) [XXX] of the European Parliament and of the Council³.”

(c) in paragraph 1, the following point (g) is added:

“(g) the application of a uniform call rate of 15% to the share of residual profit of multinational enterprises reallocated to Member States pursuant to [the Directive on implementation of the global agreement on re-allocation of taxing rights⁴.]”

(d) the following paragraph 2a is inserted:

“2a. By way of derogation from paragraph 1, point (e), the following shall apply until the financial year 2030:

- (a) where a Member State’s share in the total amount of revenue resulting from the application of paragraph 1, point (e), is lower than 75% of its share in the Union gross national income, that Member State shall make available an amount that is equal to 75% of that gross national income share, multiplied by the total amount of revenue resulting from the application of paragraph 1, point (e).
- (b) a Member State’s share in the total amount of revenue resulting from the application of paragraph 1, point (e), shall not be higher than 150% of that Member State’s share in the Union gross national income for Member States with a gross national income per capita below 90% of the Union’s average, measured in purchasing power standard and calculated on the basis of the figures for 2020, for the period from 2023 to 2027, and on the basis of the figures for 2025, for the period from 2028 to 2030.

Gross national income as referred to in points (a) and (b) shall mean the gross national income at market prices as referred to in Article 1(1) of Regulation (EU) 2019/516 of the European Parliament and of the Council⁵.”

Article 2

Entry into force and application

The Secretary-General of the Council shall notify the Member States of this Decision.

³ Regulation (EU) [XXX] of the European Parliament and of the Council on the carbon border adjustment mechanism.

⁴ [Directive (EU) XXX giving effect to the OECD/G20 IF Pillar 1 Agreement].

⁵ 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).

Member States shall notify the Secretary-General of the Council without delay of the completion of the procedures for the approval of this Decision in accordance with their respective constitutional requirements.

This Decision shall enter into force on the first day of the first month following receipt of the last of the notifications referred to in the second paragraph.

Article 1(1), point (a), shall apply from 1 January 2023 for the revenues pursuant to Article 3d and 10 of Directive 2003/87/EC, and from the day following the last day of the period for transposing Directive (EU) [XXX] of the European Parliament and of the Council⁶ amending Directive 2003/87/EC for the revenues pursuant to Article 30d of Directive 2003/87/EC.

Article 1(1), point (b), shall apply from the date of application of Regulation (EU) [XXX] establishing a carbon border adjustment mechanism.

Article 1(1), point (c), shall apply from

the first day of 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.

Article 3

Addressees

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*

⁶ Directive (EU) XXX/XXXX of the European Parliament and of the Council of dd/mm/yy