EUROPEAN
COURT
OF AUDITORS

Opinion No 5/2018

concerning

(a) The proposal for a Council Decision on the system of own resources of the European Union (COM(2018) 325 final);

(b) The proposal for a Council Regulation on the methods and procedure for making available the Own Resources based on the Common Consolidated Corporate Tax Base, on the European Union Emissions Trading System and on Plastic packaging waste that is not recycled, and on the measures to meet cash requirements (COM(2018) 326 final); and

(c) The proposal for a Council Regulation amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (COM(2018) 328 final).

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THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Articles 287(4) and 322(2) thereof,

Having regard to the following Commission's proposals made on 2 May 2018:

(a) the proposal for a Council Decision on the system of own resources of the European Union (COM(2018) 325 final);

(b) the proposal for a Council Regulation on the methods and procedure for making available the Own Resources based on the Common Consolidated Corporate Tax Base, on the European Union Emissions Trading System and on Plastic packaging waste that is not recycled, and on the measures to meet cash requirements (COM(2018) 326 final);

(c) the proposal for a Council Regulation laying down implementing measures for the system of Own Resources of the European Union (COM(2018) 327 final); and

(d) the proposal for a Council Regulation amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (COM(2018) 328 final),

Having regard to the Commission's requests for an opinion on proposals under points (b) and (d) above, received on 3 May 2018,

Having regard to the European Parliament's request for an opinion on the proposal under point (a) above, received on 25 June 2018, Having regard to Council Decision 2014/335/EU, Euratom of 26 May 2014 on the system of own resources of the European Union[1],

Having regard to Council Regulation (EU, Euratom) No 608/2014 of 26 May 2014 laying down implementing measures for the system of own resources of the EU; and to 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[2], this latter as amended by Council Regulation (EU, Euratom) No 2016/804 of 17 May 2016[3],

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from Value Added Tax[4], as last amended by Council Regulation (EC) No 807/2003 of 14 April 2003[5],

Having regard to the previous opinions given by the European Court of Auditors on the EU's system of own resources[6].

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[1] OJ L 168, 7.6.2014, p. 105.

[2] OJ L 168, 7.6.2014, p. 29 and 39.

[3] OJ L 132, 21.5.2016, p. 85.

[4] OJ L 155, 7.6.1989, p. 9.

[5] OJ L 122, 16.5.2003, p. 36.

[6] Opinions No 7/2015 (OJ C 5, 8.1.2016, p. 1), No 7/2014 (OJ C 459, 19.12.2014, p. 1), No 2/2012 (OJ C 112, 18.4.2012, p. 1), No 2/2008 (OJ C 192, 29.7.2008, p. 1), No 2/2006 (OJ C 203, 25.8.2006, p. 50), No 4/2005 (OJ C 167, 7.7.2005, p. 1) and No 7/2003 (OJ C 318, 30.12.2003, p. 1).

Having regard to the European Court of Auditors' briefing paper on the future of EU finances[7].

Having regard to the European Court of Auditors' briefing paper on the Multiannual Financial Framework for the period 2021-2027[8].

Having regard to the final report and recommendations of the High-Level Group on Own Resources (HLGOR) on the future financing of the EU, issued in December 2016[9].

Whereas:

(1) The European Council of 24 and 25 March 1999 concluded[10], among other things, that the EU's own resources system should be equitable, transparent, cost-effective and simple, and that it must be based on criteria which best express each Member State's ability to contribute;

(2) The European Council of 15 and 16 December 2005 reached agreement[11], among other things, that own-resources arrangements should be guided by the overall objective of equity, that these arrangements should therefore ensure that no Member State sustains a budgetary burden which is excessive in relation to its

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7 Future of EU finances: reforming how the EU budget operates, briefing paper, 15 February 2018.

8 The Commission's proposal for the 2021-2027 Multiannual Financial Framework, briefing paper, 10 July 2018.

9 Future Financing of the EU - Final report and recommendations of the High Level Group on Own Resources (HLGOR) on the future financing of the EU issued in December 2016.

10 See Bulletin EU 3-1999.

11 See paragraph 6 of the Presidency Conclusions (Council Document 15914/1/05, REV 1, CONCL 3 of 30 January 2006) referring to Council Document 15914/05 CADREFIN 268 of 19 December 2005, and in particular paragraph 77 thereof.

relative prosperity, and that these arrangements should accordingly introduce provisions covering specific Member States;

(3) The European Council meeting of 7 and 8 February 2013 called upon continuing to work on the proposal of the Commission for a new own resource based on VAT to make it as simple and transparent as possible, to strengthen the link with the EU's VAT policy and actual VAT receipts, and to ensure equal treatment of taxpayers in all Member States[12];

(4) In December 2013, the Council, the European Parliament and the Commission adopted a "Joint Declaration", stating that the question of own resources required further work, and that an inter-institutional high level group would be convened to undertake a general review of the system[13];

(5) The Commission's White Paper on the future of Europe[14] indicated, in 'Scenario 5: Doing much more together', that the EU budget should be significantly modernised and increased, backed up by own resources;

(6) The Commission's Reflection Paper on the future of EU finances[15] stressed that the current approach to financing is over-complicated, opaque and riddled with complex correction mechanisms and in the future, and that the system should be simple, fair and transparent;

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[12] European Council 7/8 February 2013 conclusions (Multiannual Financial Framework) EUCO 37/13.

[13] Joint Declaration on Own Resources Council of the European Union: Interinstitutional File: 2011/0177 (APP).

[14] COM(2017) 2025 final of 1 March 2017.

[15] COM(2017) 358 final of 28 June 2017.

(7) The resolution on the reform of the EU's system of own resources adopted by the European Parliament in March 2018 highlighted shortcomings in the way the EU budget is currently financed and called for far-reaching reforms. It also called, in particular, for the introduction of new, different categories of own resources and the discontinuation of all corrections[16].

HAS ADOPTED THE FOLLOWING OPINION:

SUMMARY

I. The financing system for the EU budget has not been significantly reformed since 1988. The three main categories of revenue (Traditional Own Resources (TOR), the Value Added Tax (VAT)-based own resource and the Gross National Income (GNI)-based own resource) have, for the last 30 years, ensured the overall stability and sufficiency of the funds collected. The Commission has proposed changing this financing system for the future budget under the 2021-2027 Multi-annual Financial Framework (MFF) by:

- reforming existing own resources, which will make up 87 % of EU revenue: keeping TOR but with lower rate of collection costs, maintaining the GNI-based own resource and simplifying the own resource based on VAT;
- introducing a 'basket' of three new own resources, which together will make up 12 % of EU revenue: one based on the Common Consolidated Corporate Tax Base (CCCTB), one based on the European Union (EU) Emissions Trading System (ETS) and one based on plastic packaging waste that is not recycled;
- phasing out the corrections that exist in the current system; and

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[16] European Parliament resolution of 14 March 2018 on reform of the European Union's system of own resources (2017/2053(INI)).

- increasing the ceilings for own resources to overcome the impact of Brexit and the integration of European Development Fund (EDF) into the EU budget, as well as to cover financial liabilities linked to loans or financial facilities guaranteed from the EU budget.

II. The proposed new EU financing system took on board a number of the key principles of the reform, but not all. In addition, it addresses some of the weaknesses we identified in our previous work on the existing own-resources system. In our view, the proposed EU financing system remains complex.

III. We assessed the Commission's proposals and found the following main issues:

- The proposed reduction of the collection costs rate for TOR is not justified by means of a study providing reliable estimates of the costs incurred by customs authorities in collecting duties;

- The proposed simplified VAT-based own resource includes assumptions on standard-rated transactions that do not adhere to some of the calculation steps described by the Commission;

- The application of the own resource based on the CCCTB is subject to the Directive on this tax being adopted by the Council and transposed in the Member States. It will be at the earliest phased in several years after the start of the new MFF;

- The EU ETS is an important tool for implementing the EU's policies on climate and the environment. However, the proposed own resource based on the EU ETS does not create an additional incentive for Member States to reduce greenhouse gas emissions. In addition, it is not a stable resource since the auction prices of the emission allowances are highly volatile;

- The plastic packaging waste-based own resource provides an incentive for Member States to increase plastics recycling. We noted, however, that there is a need to improve the quality of data used to calculate this own resource;

- The phasing-out of corrections is a step forward in implementing a more transparent and less complex system. According to the Commission's proposal, corrections will end in 2026, and

- As regards the proposed new own resources, there may be restrictions on our audit powers in respect of those based on the CCCTB and plastic packaging waste. There is a risk this may affect auditability and thus accountability.

IV. We recommend that the legislative bodies ask the Commission to undertake the following as soon as possible:

(a) Review the legislative proposals; as regards the new own resources, the Commission should:

- carefully assess the likelihood of applying the CCCTB-based own resource during the next MFF;

- clarify in its proposal that the EU ETS-based own resource does not create an additional incentive for Member States to reduce greenhouse gas emissions, and analyse the impact of this resource's volatility;

- carefully consider how the amounts expected to be collected through the plastic packaging waste-based own resource may decrease due to changes in the behaviour of households and economic operators,

(b) Reconsider the proposal for the simplified VAT-based own resource and, should it decide to keep it, modify the proposal.

INTRODUCTION

1. The financing system for the EU budget has not been significantly reformed since 1988. The three main categories of revenue (Traditional Own Resources (TOR), the Value Added Tax (VAT)-based own resource and the Gross National Income (GNI)-based own resource) have, for the last 30 years, ensured the overall stability and sufficiency of the funds collected. However, they have also perpetuated the perception that national contributions to the EU budget are a mere cost factor for the Member States. This has allowed some of them to negotiate corrections and rebates in order to reduce their budgetary imbalances.

2. In 2011, the Commission proposed simplifying the VAT-based own resource and creating a new own resource based on a Financial Transaction Tax (FTT). This proposal was supported by the European Parliament. While there was broad consensus on the need for reform, the Member States could not reach a unanimous agreement in order to adopt the proposal.

3. The High-Level Group on Own Resources (HLGOR) was set up as part of the final agreement on the Multi-annual Financial Framework (MFF) for the period 2014-2020. Its 2016 final report recommended introducing new categories of own resources with a closer link to EU policies and discontinuing correction mechanisms. The Commission’s Reflection Paper on the future of EU finances set out the key principles for the reformed own resources, taking into account the recommendations of the HLGOR:

(a) transparency,

(b) simplicity,

(c) stability,

(d) consistency with EU policy objectives,

(e) impact on competitiveness and sustainable growth, and

(f) equitable breakdown among Member States.

4. The Commission’s proposal for the MFF for the period 2021-2027[17] provides an opportunity to modernise the EU’s financial framework, for several reasons. The EU is facing the need to fund new European policies which cannot be efficiently or effectively delivered by national spending. Furthermore, the budgetary consequences of the United Kingdom (UK)’s withdrawal from the EU will necessitate a reform of the revenue side of the budget.

5. In the Commission’s view, EU spending creates European public goods that benefit all Member States. The benefits resulting from stability, peace, common values and the single market do not show up in net balance calculations. The future MFF should be shaped by the principle of European added value. Furthermore, in a well-designed and modern EU budget, all Member States should be net beneficiaries[18].

6. As provided for in the explanatory memorandum of the proposal for a Council Decision on the system of own resources, the Commission has, for the period 2021-2027, proposed:

(a) Reforming some of the existing own resources:

i Keeping customs duties (TOR), but with lower rate of collection costs;

ii Maintaining the GNI-based own resource;

iii Simplifying the VAT-based own resource.

(b) Introducing a ‘basket’ of three new own resources:

i Common Consolidated Corporate Tax Base (CCCTB)-based own resource;

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[17] Proposal for a Council Regulation laying down the multiannual financial framework for the years 2021 to 2027 (COM(2018) 322 final of 2 May 2018).

[18] Communication from the Commission to the European Parliament and the Council on ‘A new, modern Multiannual Financial Framework for a European Union that delivers efficiently on its priorities post-2020’ (COM(2018) 18 final of 14 February 2018).

ii European Union (EU) Emissions Trading System (ETS)-based own resource;

iii Plastic packaging waste-based own resource.

(c) Phasing out corrections.

(d) Increasing the ceilings for own resources.

PART ONE: GENERAL REMARKS

7. The Commission's proposal for reform of EU financing makes reference to the HLGOR's final report and the key principles set out in the Reflection Paper on the future of EU finances (see paragraph 3). However, the preparation of this proposal did not include a comprehensive, documented and published impact assessment[19].

8. The Commission estimates that the proposed changes to the future EU budget will have the following impact as compared to the current system (see ***Figure 1***):

- It will reduce the GNI-based own resource by 13 percentage points,
- It will create three new own resources (based on the CCCTB, the EU ETS and plastic packaging waste), which will amount to 12 %,
- It will slightly increase the (simplified) VAT-based own resource, and
- The other sources (TOR and other revenue) will, overall, remain stable.

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[19] According to the Better Regulation Guidelines (SWD(2017) 350 final of 7 May 2017), an impact assessment is required when the expected economic, environmental or social impacts of EU action are likely to be significant (p. 15).

National contributions[20] will make up around 84 % (according to the Commission's estimates) of revenue, as is also the case in the current EU financing system (83 % in the 2018 budget).

<u>Figure 1</u> – Commission estimate of the proposed changes to the future EU budget compared to the current one

Own resources	**Budget 2018**			**Estimated yearly average 2021-2027**		
	€ billion	% of total revenue		€ billion	% of total revenue	
TOR	23	16 %		26	15 %	
(Simplified) VAT-based own resource	17	12 %	National contributions: 120 billion € (83 % of total revenue)	25	14 %	National contributions: 150 billion € (84 % of total revenue)
GNI-based own resource	103	71 %		103	58 %	
CCCTB-based own resource	-	-		12	6 %	
EU ETS-based own resource	-	-		3	2 %	
Plastic packaging waste-based own resource	-	-		7	4 %	
Total own resources	143	99 %		176	99 %	
Revenue other than own resources	2	1%		2	1 %	
Total revenue	145	100 %		178	100 %	

Source: ECA, based on the explanatory memorandum of the Commission's proposal for a Council Decision on the system of own resources of the European Union.

[20] National contributions are the payments made directly from the Member States' budgets. They include all own resources except TOR.

Own resources call rates

9. In the current system, the call rate[21] to be applied to the VAT-based own resource is set out in the Council Decision. There is no call rate for TOR, and the actual call rate for the GNI-based own resource is determined every year in order to ensure that the EU budget is balanced.

10. In order to make it possible to change the mix of own resources during the MFF period without requiring an amendment to the Council Decision on the system of Own Resources, the Commission envisages two sets of call rates for each of the own resource categories, except for GNI (see ***Figure 2***): a maximum level in its proposal for the Council Decision, and a call rate to be applied (at a lower level) in its proposal for a Council Regulation implementing the above Decision (see paragraphs 21, 27, 35 and 39). This approach provides additional flexibility in the way the EU budget is financed.

***Figure 2* – Maximum call rates and call rates to be applied**

Own resource	**Maximum call rate** As indicated in the proposal for a Council Decision on the system of Own Resources of the European Union.	**Call rates to be applied** As indicated in the proposal for a Council Regulation laying down implementing measures for the system of Own Resources of the European Union.
(Simplified) VAT-based own resource % applicable to the standard-rated VAT base.	2 %	1 %
CCCTB-based own resource % applicable to the share of taxable profits attributed to each Member States.	6 %	3 %
EU ETS-based own resource % of revenue generated by the allowances to be auctioned and the market value of transitional free	30 %	20 %

[21] The call rate is the unit rate (expressed in percentage or in value) that applies to the aggregates used as a basis for the calculation of own resources.

allowances for the modernization of energy sector.		
Plastic packaging waste-based own resource Applicable to the weight of plastic packaging waste that is not recycled.	€1,00 per kilogram	€0,80 per kilogram

Source: ECA, based on the proposals from the Commission.

Implementing provisions

11. The Commission's proposal for a Council Regulation on the methods and procedure for making available the own resources based on the CCCTB, on the EU ETS and on plastic packaging waste that is not recycled, and on the measures to meet cash requirements, is in addition to Council Regulation (EU, Euratom) No 609/2014[22], which will continue to apply to existing own resources.

12. This proposal includes several references to the above Regulation (EU, Euratom) No 609/2014, and the updated requirements will mean two different regulations on own resources. In our view, a single regulation with a comprehensive set of provisions on own resources would make the system simpler and more transparent (see ***Annex 1***).

PART TWO: SPECIFIC REMARKS

13. Below are our specific remarks on the reformed EU financing system. We assessed in particular:

- the degree of complexity of the Commission's management systems,
- the quality of the data and models used as a basis for the proposals,

[22] 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).

- the stability of the funds to be collected,
- the transparency in the annual calculation of Member States' contributions, and
- the possibility for us to provide assurance on the basis of sufficient audit work (auditability).

A summary of our assessment against the above criteria is presented in ***Figure 3***.

Figure 3 ***- The Court's assessment of the appropriateness of the individual own resources included in the Commission's proposed reform***

Criteria: Own resources based on:	Degree of complexity	Quality of data and models	Stability of the funds	Transparency	Auditability
Simplified VAT	Low	Low (see paragraph 22)	High	High	Medium
EU ETS	Low	High	Low (see paragraphs 37)	Medium	High
CCCTB	Medium	Low (see paragraph 33)	High	Medium	Medium (see paragraph 30)
Plastic packaging waste	Medium	Low (see paragraph 40)	Medium	High	Medium (see paragraph 41)
TOR	Low	Medium (see footnote 24)	High	High	Medium
GNI	Medium (see paragraph 18)	Medium (see paragraph 18)	High	Medium	Medium (see footnote 49)

Source: ECA, taking into account the work carried out by the HLGOR (see paragraphs 3 and 7).

Reforming some of the existing own resources

Keeping customs duties (TOR), but with lower rate of collection costs

14. TOR are the customs duties levied on imports of products from non-EU countries. They amount to 16 % of the EU budget in 2018 (23 billion euros). According to the Commission's estimates, their contribution to the EU budget is expected to remain stable: on average, 15 % of the annual EU budget (26 billion euros) for the period 2021-2027. Member States

collect these duties on the behalf of the EU and make them available to the EU budget after deducting 20 % of their collection costs. This rate varied between 10 % and 25 % in previous versions of the own resources system.

15. The Commission estimates that collection costs are currently higher than actual spending by Member States on the diligent recovery of customs duties. It also points out that the amounts collected and the intensity of controls vary significantly between Member States, and that the amounts retained as collection costs are not always used to support customs activities[23]. As a consequence, the Commission has proposed reducing the rate to its initial level of 10 %.

16. TOR are a genuine own resource and constitute a reliable source of EU revenue[24]. However, we note that the Commission did not justify the rate of 10 % by means of a study providing reliable estimates of the costs incurred by Member State customs authorities in collecting duties[25].

Maintaining the GNI-based own resource

17. The GNI-based own resource is currently the EU's main source of revenue (103 billion euros, or 71 % of the EU budget in 2018). According to the Commission's estimates, its contribution to the EU budget is expected to be reduced to, on average, 58 % of the annual

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23 The high rate of collection costs was perceived as a hidden rebate for some Member States, as also indicated by the HLGOR final report, p. 40.

24 The evasion of customs duties affects the collection of TOR. We examined the issue of the 'customs gap' (i.e. the difference between expected customs revenues and those actually collected) in special report 19/2017 – Import procedures: shortcomings in the legal framework and an ineffective implementation impacts the financial interests of the EU. See also our 2017 annual report.

25 In our Opinion No 2/2012, we had already noted that there was no study at EU level providing reliable estimates on the actual costs incurred by customs authorities in collecting duties and making available TOR.

EU budget (103 billion euros) for the period 2021-2027. It is calculated by applying a uniform rate to Member States' GNIs. This rate is determined as a percentage of the annual forecast GNI, so that it fully covers that part of the budget not financed by TOR, the VAT-based own resource and other revenue. The GNI-based own resource is therefore the balancing item of the EU budget.

18. We have highlighted, in previous Opinions[26], the high risks connected with the complexity involved in compiling the GNI statistical aggregate and in the related management systems, as well as the lack of transparency in the calculation of this own resource. Due to the Commission's multi-annual verification cycle and the management of reservations, it takes a very long time to revise the GNI data used to calculate own resources. As a result, national contributions may still be subject to corrections more than 10 years after the one in question, and Member States face budgetary uncertainty[27].

19. We acknowledge that the GNI-based own resource ensures the overall stability of the EU financing system. However, in our 2016 and 2017 annual reports, we pointed out that additional work was needed in order to ensure that certain phenomena related to globalisation (such as the relocation of multinational enterprises) were correctly captured in national accounts. The Commission acknowledged this in its proposals and recognised that recent economic developments pose challenges for national authorities in properly measuring GNI. As a result, Member States' GNI-based contributions are calculated using data which may not be entirely reliable in this respect.

[26] See footnote 6.

[27] See special report 11/2013 – Getting the Gross National Income (GNI) data right: a more structured and better-focused approach would improve the effectiveness of the Commission's verification and our 2014 annual report.

Simplifying the VAT-based own resource

20. In the current system, the process of harmonising Member States' VAT bases results in numerous corrections and compensations. The calculation of the Weighted Average Rate (WAR) is also complex. This own resource accounts for 12 % of the EU budget in 2018 (17 billion euros) and, according to the Commission's estimates, its contribution is expected to increase, on average, to 14 % of the annual EU budget (25 billion euros) for the period 2021-2027.

21. The proposed simplification is based on three steps:

(a) Focusing on supplies which are subject to the VAT standard rate,

(b) Streamlining the procedure for calculating VAT bases by using simplified assumptions based on the standard-rated receipts, and

(c) Applying a uniform call rate on the standard-rated bases[28] to obtain the own resource.

22. Our examination of the proposed methodology reveals that the assumptions used by the Commission to calculate the simplified VAT contributions do not adhere to the above steps (a) and (b). ***Annex 2*** provides a detailed examination of the current and the proposed new system for calculating the VAT-based own resource[29].

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[28] One percent is the uniform rate set out by the proposal of Council Regulation laying down implementing measures for the system of Own Resources of the European Union. The proposal for a Council Decision on the system of Own Resources of the European Union indicates that the actual call rate should not exceed 2 %.

[29] According to the Commission, this methodology for calculating the new own resource had to be used due to the lack of available data on the breakdown of receipts by VAT rate.

23. As mentioned in our Opinion No 2/2012, we have, on a number of occasions, criticised the VAT-based own resource for the complexity of its calculation[30] and its lack of direct link to the tax base. The Commission's new proposal for the VAT-based own resource simplifies the calculation, but still does not provide any direct link to the tax base. Such a link could, however, be obtained by applying a call rate directly to the VAT receipts[31].

A 'basket' of new own resources

24. The Commission has proposed introducing a 'basket' of three new sources of revenue. The 'basket' approach is aimed at providing genuine own resources linked to key EU policies such as climate change, environmental policy, plastics strategy, the circular economy and the single market. However, the proposed new sources of revenue are, in essence, national contributions, and only two (CCCTB- and plastic packaging waste-based own resources) of the three might have any impact on the implementation of EU policies (see paragraphs 26 and 42).

25. According to the Commission, implementing the reformed system will not lead to additional budget appropriations or staff, particularly with regard to the new own resources. However, this assessment is not substantiated by any detailed study.

CCCTB-based own resource

26. Globalisation and the increasing role of digital companies pose challenges for national tax authorities. In recent years, the rise of intangible assets has made capital mobility easy, and the debate has shifted to the inadequacy of national taxation frameworks to properly

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[30] In our 2017 annual report, we reported weaknesses in the Commission's verification of the VAT-based own resource, notably in relation to the calculation of the WAR.

[31] The evasion of VAT affects the calculation of both the current and the proposed own resource based on this tax aggregate. We examined this 'VAT gap' in special report 24/2015 – Tackling intra-Community VAT fraud: More action needed.

address these developments. Discussions in the Council on the project of introducing the CCCTB started in 2011, and the Commission, in its action plan of June 2015[32], proposed a step-by-step approach towards an EU-wide corporate tax system. The Commission made two simultaneous legislative proposals in October 2016:

(a) for the first step, a proposal for a Council Directive on the Common Corporate Tax Base (CCTB)[33], to ensure the proper computation of the tax base for companies and permanent establishments in the EU, and

(b) for the second step, a proposal for a Council Directive on the CCCTB[34], to properly deal with the consolidation process and other related issues[35].

27. If the above legislative proposals are adopted by the Council and ratified in the Member States, taxation based on the CCCTB will be compulsory for large companies meeting certain requirements as regards legal form, taxation, consolidation of entities and group threshold (revenue of 750 million euros during the year preceding the relevant financial year). The proposed new own resource based on this tax is calculated by applying the call rate of 3 %[36] to the taxable profits of multinational companies or groups of companies.

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[32] Communication from the Commission to the European Parliament and the Council of 17 June 2015 on fair and efficient corporate tax system in the EU: 5 key areas for action (COM(2015) 302 final).

[33] Proposal for a Council Directive on a Common Corporate Tax Base (COM(2016) 685 final of 25 October 2015).

[34] Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (COM(2016) 683 final of 25 October 2015).

[35] For example, re-organisations of groups, the treatment of losses and unrealised capital gains, and the apportionment method to allocate the tax base among Member States.

[36] This is the uniform rate set out in the proposal for a Council Regulation laying down implementing measures for the system of Own Resources of the European Union. The proposal

28. Companies which do not meet all these criteria may, on a voluntary basis, choose to be subject to this tax instead of other Member States' national corporate taxes. However, the value of their revenue will be excluded from the base used to calculate the own resource.

29. The proposal for a Council Directive on the CCCTB states that the consolidation tax base should be shared between the company group entities in the different Member States at the end of the financial year, based on a formula that gives equal weighting (i.e. one third) to three factors: sales, labour (payroll and number of employees) and assets.

30. We note, however, that the ability of individual Member States to verify the correct allocation of revenue within the group is dependent on cooperation from other Member States as regards the transmission of data on the various subsidiary and parent companies. Our access, and that of the Commission, to detailed management information on private companies may be subject to restrictions.

31. The Commission has proposed, in respect of both CCCTB and plastic packaging waste, that after 31 July of the sixth year following a given financial year, any changes in the calculation of these own resources should no longer be taken into account[37]. This period during which Member States' contributions for a certain year can be revised is known as the 'time-barring period'.

32. We note that this period is longer than the one used for the VAT and GNI-based own resources, which is only four years. The same is also true of the retention period for supporting documents[38]. Since both the Commission and the Member States may extend

for a Council Decision on the system of Own Resources of the European Union indicates that the actual call rate should not exceed 6 %.

[37] Article 13(4) of the proposal for a Council Regulation (COM(2018) 326 final).

[38] For the EU ETS-based own resource and TOR, the document retention period is at least three years.

the time-barring period by setting reservations, there are no financial risks to the EU budget related to the new own resources based on the CCCTB and plastic packaging waste (see ***Annex 1***).

33. Given that, two years after the proposals were issued, the Directives on the CCTB and CCCTB have still not been adopted, it will be phased in at the earliest several years after the start of the new MFF. The CCCTB-based own resource is expected to finance on average 6 % of the annual EU budget (12 billion euros) for the period 2021-2027[39].

EU ETS-based own resource

34. In the context of the Paris agreement adopted in December 2015, the EU committed to reducing its greenhouse gas emissions by at least 40 % by 2030 (from 1990 levels). The EU ETS is one of the main instruments[40] for reaching these emissions reduction targets. With the ETS, the EU has set a limit on overall emissions from some energy supply sectors, energy-intensive industries and intra-European Economic Area (EEA) flights, and created a marketplace for emissions quotas, thereby 'putting a price' on carbon. It provides a limit (cap) on emissions. Companies receive or buy emission allowances, which they can trade. ***Box 1*** gives an overview of the EU ETS[41].

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[39] Due to data limitation, this calculation is based on information for 2012, and includes all multinational groups (including those not exceeding the threshold of revenue, as set out in paragraph 28).

[40] Emissions from sectors falling outside the EU ETS are covered by binding annual greenhouse targets at Member State level.

[41] We have previously published a report on the EU ETS (special report 6/2015 – The integrity and implementation of the EU ETS). Further publications in this area will follow soon.

***Box 1* – Overview of the EU ETS**

The EU ETS works on the 'cap and trade' principle. The overall volume of greenhouse gases that can be emitted over a multi-year period by power plants, factories and other companies covered by the system is subject to a cap set at EU level. Within this cap, companies receive or buy emission allowances, which they can trade if they wish to do so.

Over the period 2013-2020, the cap on emissions from power stations and other fixed installations is being reduced by 1,74 % every year. From 2021 onwards, the annual reduction rate will be 2,2 %.

Auctioning allowances provides revenue for the Member States, which collected 21,3 billion euros over the period 2013-2017. Under the EU ETS Directive, at least 50 % of this revenue should be used for climate-related purposes. According to the Commission, the share of ETS revenue used for these purposes is around 80 %.

35. This proposed new own resource is calculated by applying the call rate of 20 %[42] to the revenue from the auctioning of allowances, which are valued at the auction clearing price and available for distribution to all Member States based on 2005-2007 emissions[43]. The auction prices and volumes are published every day by the relevant platforms.

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[42] This is the uniform rate set out in the proposal for a Council Regulation laying down implementing measures for the system of Own Resources of the European Union. The proposal for a Council Decision on the system of Own Resources of the European Union indicates that the actual call rate should not exceed 30 %.

[43] See Article 10(2)(a) of 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), as amended by Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 (OJ L 76, 19.3.2018, p. 3) (the 'ETS Directive').

36. The EU ETS is an important tool for implementing the EU's policies on climate and the environment. However, the proposed own resource based on the EU ETS does not create an additional incentive for Member States to reduce greenhouse gas emissions.

37. The Commission indicates that it expects the EU ETS-based own resource to finance on average 2 % of the annual EU budget (3 billion euros) for the period 2021-2027. As ***Figure 4*** shows, the auction clearing price[44] of the allowances is volatile. However, this will not jeopardise the stability of the budget as the ETS-based own resource only represents a small proportion of the EU revenue.

***Figure 4* – Auction prices of emission allowances January 2012-September 2018**

Source: ECA, based on the public available information in the auction platform website (www.eex.com).

Plastic packaging waste-based own resource

38. Plastic packaging accounts for about 60 % of post-consumer plastic waste in the EU. The Commission has proposed the target of recycling at least 50 % of all plastic packaging in the

[44] The amendments to the ETS Directive introduced mechanisms to make the auction prices more stable. However, these prices are dependent on the auction results.

EU by 2025 and more than half by 2030. It has also set the objective that, by 2030, all plastic packaging placed on the EU market should be reusable or easily recycled[45].

39. Each Member State's contribution of this proposed own resource to the EU budget will be directly proportional to the quantity of plastic packaging waste it generates that is not recycled. It will be calculated by applying the call rate of 0,80 euros per kilogram[46] to this quantity.

40. ***Box 2*** illustrates the source and the quality of the data used by the Commission to calculate the own resource based on plastic packaging waste.

***Box 2* – Source and quality of data on plastic packaging waste**

Data on packaging generation and recycling are already reported to the Commission (Eurostat) pursuant to Article 12 of the European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste[47].

The Commission proposes that, for some Member States, data on recycled plastic packaging should be further improved. It expects to achieve this by means of the new waste legislation introducing strict and harmonised calculation rules. This legislation was adopted in May

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[45] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A European Strategy for Plastics in a Circular Economy' (COM(2018) 28 final of 16 January 2018) and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a monitoring framework for the circular economy (COM(2018) 29 final of 16 January 2018).

[46] This is the uniform rate set out by the proposal for a Council Regulation laying down implementing measures for the system of Own Resources of the European Union. The proposal for a Council Decision on the system of Own Resources of the European Union indicates that the actual call rate should not exceed 1,00 euro per kilogram.

[47] OJ L 365, 31.12.94, p. 10.

2018[48] and amended the above Directive. These amendments to the Directive, which introduce strict and harmonised calculations, must be enacted into national legislation by July 2020.

41. We note that, due to statistical confidentiality reasons[49], it is not possible for us to establish a full audit trail documenting the compilation of the statistical data used as the base for calculating this own resource. The Commission's verification of this source of revenue is expected to be subject to a multi-annual control process, as it is for the GNI-based own resource (see paragraph 18).

42. The plastic packaging waste-based own resource is intended to provide an incentive for Member States to reduce plastic packaging waste. Such change in behaviour may, in the long run, reduce the calculation base. We note that, as was also the case with the CCCTB-based own resource, the time-barring period, is not aligned with those of the own resources based on VAT and GNI (see paragraphs 31 and 32, and <u>***Annex 1***</u>).

43. The Commission estimates that the plastic packaging waste-based own resource will finance on average 4 % of the annual EU budget (7 billion euros) for the period 2021-2027. These estimates assume that all Member States will meet the recycling targets set in the

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[48] Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste (OJ L 150, 14.6.2018, p. 141).

[49] Statistical confidentiality means '*the protection of confidential data related to single statistical units which are obtained directly for statistical purposes or indirectly from administrative or other sources and implying the prohibition of use for non-statistical purposes of the data obtained and of their unlawful disclosure*'. See Article 2(1)(e) of Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

Directives. However, they do not take into consideration the potential change in behaviour mentioned above.

Phasing out corrections

44. The Fontainebleau European Summit in June 1984 reached the conclusion that Member States sustaining excessive budgetary burdens in relation to their relative prosperity may benefit from a correction. Since then, the own resources system has included some correction mechanisms favouring a number of Member States. This has made the financing of the EU budget overly complex and less transparent, a criticism we have emphasised in previous Opinions[50].

45. The existing correction mechanisms are: the UK rebate[51], the 'rebates on the UK rebate' for Germany, the Netherlands, Austria and Sweden, the lump-sum reductions to the GNI-based own resource for Denmark, the Netherlands, Austria and Sweden, and the reduced VAT call rates for Germany, the Netherlands and Sweden.

46. One change the Commission proposed in its reform of the EU financing system was to gradually phasing out these corrections (excluding the UK rebate but including the 'rebates on the UK rebate') between 2021 and 2025. The reference amounts of all the corrections for the five Member States[52] concerned will be based on their calculation for the year 2020 under the current system (estimated to a total of 5,8 billion euros). All corrections will be turned into lump sums and progressively reduced in equal steps (17 % per year).

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[50] In Opinions No 2/2012 and No 2/2006, we expressed concerns about the complexity and lack of transparency of the current (and previous) systems of own resources for financing the EU budget.

[51] According to the proposal, the UK rebate will exist until the end of the UK contributions to the EU budget (i.e. 2020).

[52] Denmark, Germany, the Netherlands, Austria and Sweden.

47. According to the Commission, immediately abolishing corrections with effect from 2021 may lead to a sudden increase in the contributions of those Member States which had previously benefitted from these corrections. We consider the progressive phasing out corrections to be a step forward towards a more transparent and less complex system, than the existing one (see paragraphs 44 and 45). According to the Commission's proposal, corrections will end in 2026.

Increasing the ceilings for own resources

48. The current ceiling for own resources to cover annual appropriations for payments is set at 1,20 % of the sum of all Member States' GNIs, and for commitment appropriations, it is 1,26 %. Taking into account the impact of the UK leaving the EU and the incorporation of the European Development Fund (EDF) into the EU budget, as well as the need to cover financial liabilities linked to loans or financial facilities guaranteed from the EU budget, the Commission has proposed increasing these ceilings to 1,29 % and 1,35 % respectively of the 27 Member States' GNIs.

PART THREE: CONCLUSIONS AND PROPOSED AMENDMENTS

49. The Commission has proposed the following changes to future EU financing from the current system: reducing the GNI-based own resource by 13 percentage points, introducing a 'basket' of new own resources (based on the CCTB, EU ETS and plastic packaging waste), making up 12 % of EU revenue, slightly increasing the simplified VAT-based own resource and keeping the other sources (TOR and other revenue) at the same overall levels. It has also proposed gradually phasing out the existing corrections benefitting certain Member States and increasing the ceilings for own resources.

50. The Reflection Paper on the future of EU finances set out the key principles for this reform, taking into account the recommendations of the HLGOR. The proposal took on board a number of them, but not all. In addition, this reform only addresses some of the

weaknesses we identified in our previous work on the existing own resources. In our view, the proposed EU financing system remains complex.

51. We noted that the preparation of this proposal did not include a comprehensive, documented and published impact assessment (see paragraph 7).

52. Our review of the reformed system has identified the following main issues:

- The proposed simplified VAT-based own resource includes assumptions on standard-rated transactions that do not adhere to some of the calculation steps described by the Commission (see paragraph 22),
- Because the application of the own resource based on the CCCTB is subject to the Directive on this tax being adopted by the Council and implemented in national law in the Member States, it will be phased in at the earliest several years after the start of the new MFF (see paragraphs 26 and 27, and 33),
- The EU ETS is an important tool for implementing the EU’s policies on climate and the environment. However, the proposed own resource based on the ETS does not create an additional incentive for Member States to reduce greenhouse gas emissions. In addition, it is not a stable resource due to the volatility of the auction prices of emission allowances (see paragraphs 36 and 37),
- The plastic packaging waste-based own resource provides an incentive for Member States to recycle more plastic. However, the quality of the data used to calculate this own resource needs to be improved (see paragraphs 40 and 42),
- Phasing out corrections is a step forward towards a more transparent and less complex system. According to the Commission’s proposal, corrections will end in 2026 (see paragraph 47), and

- As regards the proposed new own resources, there may be restrictions on our audit powers in respect of those based on the CCCTB and plastic packaging waste. There is a risk this may affect auditability and thus accountability.(see paragraphs 30 and 41).

Recommendations to improve the proposed reform of own resources

53. We recommend that the legislative bodies ask the Commission to undertake the following as soon as possible:

Recommendation 1: Review its legislative proposals

The Commission should review its proposals as regards the new own resources:

(a) CCCTB-based own resource – the Commission should carefully assess the likelihood of this resource coming into existence during the next MFF and the implications of any delay;

(b) EU ETS-based own resource – the Commission should clarify in its proposal that this resource does not create an additional incentive for Member States to reduce greenhouse gas emissions. It should also analyse the impact of the volatility associated with this source of revenue;

(c) Plastic packaging waste-based own resource – the Commission should analyse how the amounts expected to be collected from this resource may decrease due to changes in the behaviour of households and economic operators.

Recommendation 2: Reconsider its proposal for the simplified VAT-based own resource

The Commission should reconsider its proposal for the simplified VAT-based own resource. Should it decide to keep this source of revenue, it could:

- either clarify that the simplifications proposed do not lead to the calculation of the VAT contributions based on the standard-rated taxable bases,
- or introduce a new source of revenue based only on VAT receipts.

54. ***Annex 1*** sets out the amendments and comments on the Commission's proposals discussed in parts one and two.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 9 October 2018

For the Court of Auditors

Klaus-Heiner LEHNE

President

ANNEX 1

The Court's suggested amendments to the proposals

Proposal for a Council Decision on the system of Own Resources of the European Union - (COM(2018) 325 final)		
Reference	**Court's suggestion / proposed change**	**Comments**
Introduction	Having regard to the opinion of the European Court of Auditors;	Since the Parliament has requested the European Court of Auditors' opinion, such a reference should be made.
Article 2(1)(b)	Delete "collected from the standard-rated taxable supplies" and reconsider its proposal as described in ***Recommendation 2***.	The method proposed by the Commission does not isolate standard-rated taxable supplies (see paragraph 22).

Proposal for a Council Regulation on the methods and procedure for making available the Own Resources based on the Common Consolidated Corporate Tax Base, on the European Union Emissions Trading System and on Plastic packaging waste that is not recycled, and on the measures to meet cash requirements - (COM(2018) 326 final)		
Reference	**Court's suggestion / proposed change**	**Comments**
Articles 2(2) and 13(4)	Replace "sixth year" by "fourth year".	Six years may be an excessive length of time to leave the data open. This brings budget uncertainty for the Commission and Member States (see paragraphs 31 and 32, and 42). We propose this in order to align the two new own resources (based on CCCTB and Plastic packaging waste) with the GNI- and VAT-based own resources.
Article 4	-	For the sake of clarity, this provision should form part of an amendment to Regulation (EU, Euratom) No 609/2014 (see paragraphs 11 and 12).

Proposal for a Council Regulation amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax - (COM(2018) 328 final)		
Reference	**Court's suggestion / proposed change**	**Comments**
Recitals (1), (2) and (3); Article 1(2), (4), (6) and (7)	Delete "standard-rated" and reconsider its proposal as described in ***Recommendation 2***.	The method proposed by the Commission does not isolate standard-rated taxable supplies (see paragraph 22).

ANNEX 2

Methodology for calculating the proposed new VAT-based own resource

The current system:

The method for calculating Member States' VAT-based own resources is based on a notionally harmonised VAT base. This is done to prevent Member States' choices of mix of VAT rates (within the limits set in the VAT Directive) from influencing their payable contributions. This complex method takes as its starting point the VAT amount collected by each Member State (its receipts) and, after any necessary corrections and compensations, divides this amount by the Weighted Average Rate (WAR). The WAR results from a complex statistical analysis of the mix of supplies of goods and services, and the VAT rates applied, in all Member States. The resulting notionally harmonised VAT base is then multiplied by a fixed call rate to obtain each Member State's contribution.

This calculation is illustrated by the following formula, which is applied for each Member State:

$$\text{VAT based Own Resource} = \frac{\text{Total VAT receipts (adjusted)}}{\text{WAR}} * \text{Call rate}$$

The proposed new system:

Because the calculation of the WAR is complex, the Commission proposes abolishing these steps in favour of a simplified approach. The Commission's proposed new system is based on standard-rated transactions, meaning that goods and services subject to other rates of taxation are excluded.

The Commission analysed the data for the period 2011-2015 and found that, on average, standard-rated supplies of goods and services accounted for around 74 % of the transactions. This share ranged between around 46 % and 99 %, depending on the Member State. The Commission concluded that 45 % was the common EU share of standard-rated supplies.

The first step in the Commission's proposed calculation is to apply this 45 % rate to each Member State's total VAT receipts, due to the unavailability of data on the breakdown of supplies by rate of taxation. The Commission assumes that this multiplication will yield the Member State's **standard-rated receipts**. In our view, this methodology is not sound. The result of the multiplication using the 45 % rate does not exclude the receipts collected from other rates of VAT. The result only gives us 45 % of the total receipts (45 % of the standard-rated supplies plus 45 % of the non-standard-rated supplies). This is not the same as the standard-rated receipts.

The second step is to divide each Member States' "standard-rated receipts" by its standard VAT rate. According to the Commission, this yields the **standard-rated taxable base**. Hence, the resulting "standard-rated taxable base" represents a mix of receipts stemming from different rates, but divided by a single standard rate, so has little practical meaning.

Finally, the Commission proposes applying a call rate (1 % up to maximum of 2 %) to the standard-rated taxable base.

These steps can be summarised in the following formula:

$$\text{VAT based Own Resource} = \frac{45\,\%*\text{Total VAT receipts}}{\text{Standard VAT rate}} * \text{Call rate}$$

This can be rewritten from a purely mathematical point of view as follows:

$$\text{VAT based Own Resource} = \frac{\text{Total VAT receipts}}{\text{Standard VAT rate}} * 45\,\% * \text{Call rate}$$

Hence, we can arrive at exactly the same figures by simply dividing the VAT receipts by the standard rate and applying a call rate of 0,45 % (1 % of 45 %).

Therefore, we conclude that the Commission has replaced the complex WAR with a straightforward standard rate in the calculation process. However, the assumptions used by the Commission to calculate the simplified VAT contributions do not adhere to some of the calculation steps described in the proposal.