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COM(2018) 349 final

2018/0181 (CNS)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Council Regulation (EU) n° 389/2012¹ lays down the legal basis for administrative cooperation between Member States.

This proposal accompanies the proposal for a Council Directive laying down the general arrangement for excise duty with regards to Chapter V of Council Directive XXX/EC². This concerns the automation of the supervision of movements of excise goods which have been released for consumption in one Member State and that are being moved to another Member State in order to be delivered for commercial purposes in that other Member State.

The new arrangements will require the registration of economic operators moving goods under Chapter V of Directive XXX/EC³ in the register of economic operators that is currently restricted to economic operators who make use of the arrangements in Chapters III and IV of Directive XXX/EC⁴. The current proposal implements this requirement into Regulation (EU) n° 389/2012.

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

The proposal is linked with the recast of Council Directive 2008/118/EC.

- **Consistency with other Union policies**

Not applicable.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU). This article provides for the Council, acting unanimously in accordance with the special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

- **Subsidiarity (for non-exclusive competence)**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the European Union.

The objectives of the proposal cannot be sufficiently achieved by the Member States and can be better achieved at European Union level. Existing national registration procedures vary widely and are not suitable as a basis for automation of these procedures.

- **Proportionality**

The proposed amendment does not go beyond what is necessary to address the issues at stake and, in that way, to achieve the Treaty's objectives of a proper and effective functioning of the Internal Market.

¹ OJ L 121, 2.5.2012, p. 1

² COM(2018) 346

³ COM(2018) 346

⁴ COM(2018) 346

This proposal complies with the principles of proportionality as set out in Article 5, paragraph 4 of the Treaty on the European Union.

The objective of the proposal is to introduce the obligation of registration of economic operators moving goods under Chapter V, section 2 of Directive XXX/EC⁵. In the absence of that proposal the full automation of movements of goods released for consumption will not be possible.

- **Choice of the instrument**

Council Regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Directive 2008/118/EC was evaluated and the proposal for a Council Directive laying down the general arrangement for excise duty is built on this evaluation and the Commission Report to the Council and the European Parliament "on the implementation and evaluation of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty" from 21/04/2017 (COM(2017) 184 final). The report stressed the need for further automation and this proposal only concerns a minor adaptation reflecting this policy option.

- **Stakeholder consultations**

Stakeholder consultations took place in the context of the revision of Council Directive 2008/118/EC.

- **Impact assessment**

No separate impact assessment was necessary as the policy choice of further automation is underpinned by the impact assessment for the recast of Directive 2008/118/EC.

- **Regulatory fitness and simplification**

The evaluation of Directive 2008/118/EC was carried out within the framework of the Commission's REFIT programme.

- **Fundamental rights**

This proposal respects the fundamental rights, particularly the right to privacy though the existing provision on data protection contained in Regulation (EU) No 389/2012.

4. BUDGETARY IMPLICATIONS

Any financial impact relating to the introduction of Phase 4 of EMCS results from Decision XXX/EC⁶. The budgetary impact of the central development and operation of an extended new service will be covered by the FISCALIS budget within the appropriations already foreseen in the official financial programming. No additional resources will be required from the EU budget. Moreover, this initiative does not intend to prejudge the Commission's proposal on the next Multiannual Financial Framework.

⁵ COM(2018) 346

⁶ COM(2018) 341

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Explanatory documents (for directives)**

No explanatory documents on the transposition of the provisions of this proposal are considered necessary.

- **Detailed explanation of the specific provisions of the proposal**

The proposal amends the scope of Article 19 of the Regulation to include two new categories of economic operators: certified consignors, who are registered as consignors for excise goods that have already been released for consumption and certified consignees who are registered as consignees for excise goods that have already been released for consumption. An authorised warehousekeepers and registered consignors will have possibility to act as certified consignors, and authorised warehousekeepers and registered consignees as certified consignees. The competent authorities of the Member State will have to be informed about that fact and this information should as well be included in the register.

Additionally, according to the proposal, the electronic register will include information concerning the registered consignor's right to leave empty the destination fields in the draft electronic administrative document when moving energy products under duty suspension arrangement by sea or inland waterways. Under Article 23 of Directive XXX/EC⁷ the authorised warehouse keeper and the registered consignor may omit the destination field. Currently, in Regulation (EU) n° 389/2012 the central register includes such information concerning the empty destination field only in case of an authorised warehouse keeper.

⁷ COM(2018) 346

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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 113 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 Parliament⁸,

Having regard to the opinion of the European Economic and Social Committee⁹,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Article 19 of Council Regulation (EU) No 389/2012¹⁰ sets down an obligation for Member States to maintain electronic registers of authorisations of economic operators and warehouses that are engaged in moving excise goods under duty suspension arrangements.
- (2) Directive XXX/EC extends the use of the computerised system, which is currently used to supervise movements of excise goods under duty suspension, to the supervision of excise goods released for consumption in the territory of one Member State and then moved to the territory of another Member State in order to be delivered for commercial purposes.
- (3) In order to allow for the proper functioning of the computerised system by ensuring storage of complete, up to date and accurate data, it is necessary to amend the scope of Article 19 of Regulation (EU) No 389/2012 to include two new categories of economic operators: certified consignors, who are registered as consignors for excise goods that have already been released for consumption and certified consignees who are registered as consignees for excise goods that have already been released for consumption.
- (4) In accordance with Article 23 of Directive XXX/EC, in the case of movement of energy products under a duty suspension arrangement by sea or inland waterways, the competent authorities of the Member State of dispatch may authorise the consignor to omit the details of the consignee at the time of dispatch in the draft electronic

⁸ OJ C [...], [...], p. [...].

⁹ OJ C [...], [...], p. [...].

¹⁰ Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004 (OJ L 121, 8.5.2012, p. 1).

administrative document referred to in Article 21(2) of that Directive. In accordance with Regulation (EU) No 389/2012 only an authorised warehouse keeper is to include that information in the electronic register. It is essential that also the registered consignor is able to introduce into the electronic register the information concerning his right to omit the details of the consignee at the time of dispatch.

- (5) Since the objective of this Regulation, namely the extension of the electronic register to include economic operators moving excise goods released for consumption, cannot be sufficiently achieved by the Member States but can rather, by reason of ensuring the harmonised functioning of the computerised system and facilitating the fight against fraud, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (6) This Regulation respects the fundamental rights and observes the principles which are recognised by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data. In the view of the limits set by the present Regulation, the processing of such data carried out within the framework of this Regulation does not go beyond what is necessary and proportionate for the purpose of the protecting the legitimate fiscal interest of the Member States.
- (7) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council¹¹.
- (8) In order to align the application date of this Regulation with the application date of the provisions of Directive XXX/EC on automation of movements of excise goods which have been released for consumption in the territory of one Member State and are moved to the territory of another Member State in order to be delivered for commercial purposes in the territory of that other Member State and to allow the Member States adequate time to prepare for the changes resulting from this Regulation, it should apply from 14 February 2022.
- (9) Regulation (EU) No 389/2012 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Article 19 of Regulation (EU) No 389/2012 is amended as follows:

- (1) in paragraph 1(a), the following points (iv) and (v) are added:
"(iv) certified consignors within the meaning of point (11) of Article 4 of Directive XXX/EC;
(v) certified consignees within the meaning of point (12) of Article 4 of Directive XXX/EC;"
- (2) paragraph 2 is amended as follows:

¹¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1).

(a) points (f) and (g) are replaced by the following:

"(f) for authorised warehousekeepers, the tax warehouse or the list of tax warehouses to which his authorisation applies and, if applicable under national legislation, an indication that he is authorised to omit the details of the consignee at the time of dispatch in accordance with Article 23 of Directive XXX/EC, that he is authorised to split a movement in accordance with Article 24 of Directive XXX/EC or is authorised to have excise goods moved to a place of direct delivery in accordance with Article 17(4) of that Directive, an indication that he is acting as a certified consignor or a certified consignee in accordance with Article 36 (6) and (7) of Directive XXX/EC;

(g) for registered consignees, if applicable under national legislation, an indication that he is authorised to have excise goods moved to a place of direct delivery in accordance with Article 17(4) of Directive XXX/EC, an indication that he is acting as a certified consignee in accordance with Article 36 (7) of Directive XXX/EC";

(b) the following point (k) is added:

"(k) for registered consignors, an indication that he is authorised to omit the details of the consignee at the time of dispatch in accordance with Article 23 of Directive XXX/EC, an indication that he is acting as a certified consignor in accordance with Article 36 (6) of Directive XXX/EC."

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 14 February 2022.

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

Done at Brussels,

For the Council
The President